

**REQUEST FOR PROPOSAL**

**FOR**

**PROCUREMENT OF POWER**

**FOR**

**'LONG TERM'**

**Under Case – 1 Bidding Procedure**

**THROUGH**

**TARIFF BASED COMPETITIVE BIDDING PROCESS**  
**(As per Bidding Guidelines, issued by the Government of India, for**  
**Determination of Tariff by Bidding Process for Procurement of Power by**  
**Distribution Licensees)**

**FOR MEETING THE**

**BASE LOAD REQUIREMENT**

**OF**

**Jaipur Vidyut Vitran Nigam Limited (JVVNL),**  
**Ajmer Vidyut Vitran Nigam Limited (AVVNL)**  
**and**  
**Jodhpur Vidyut Vitran Nigam Limited (JdVVNL)**

**Issued by**  
**Rajasthan Rajya Vidyut Prasaran Nigam Limited (RRVPL)**

**February 2009**

**Rajasthan Rajya Vidyut Prasaran Nigam Limited (RRVPNL)**  
**Vidyut Bhawan, Janpath, Jyoti Nagar**  
**Jaipur-302005 (Rajasthan)**

Request for Proposal (hereinafter referred to as RFP) for 'long term' procurement of power under Case – 1 bidding procedure through tariff based competitive bidding (as per Bidding Guidelines, issued by the Government of India, for Determination of Tariff by Bidding Process for Procurement of Power by Distribution Licensees) for meeting the **Base Load** power requirements of Jaipur Vidyut Vitran Nigam Limited (JVVNL), Ajmer Vidyut Vitran Nigam Limited (AVVNL) and Jodhpur Vidyut Vitran Nigam Limited (JdVVNL) in the state of Rajasthan in India.

This RFP is issued to: –

**M/s** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Issued by:**

**Name:** B. K. Makhija  
**Designation:** Chief Engineer (RPPC)  
**Address:** RRVPNL, Room No. 224,  
Vidyut Bhawan, Janpath, Jyoti Nagar  
Jaipur-302005 (Rajasthan)  
**Telefax:** +91 – 141 - 2740275  
**Email:** ppmrvpn@sancharnet.in  
**Date:** .....

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## REQUEST FOR PROPOSAL NOTIFICATION FOR SUPPLY OF POWER

### Rajasthan Rajya Vidyut Prasaran Nigam Limited (RRVPNL)

1. The **Rajasthan Rajya Vidyut Prasaran Nigam Limited (RRVPNL)** hereinafter referred to as “Authorized Representative”, on behalf of **Jaipur Vidyut Vitran Nigam Limited (JVVNL)**, **Ajmer Vidyut Vitran Nigam Limited (AVVNL)** and **Jodhpur Vidyut Vitran Nigam Limited (JdVVNL)**, hereinafter referred to as “Procurer(s)” hereby invites interested companies and/or Bidding Consortium and or any Consortium Member thereof (“Bidders”) to purchase the Request for Proposal (RFP) to participate in the bidding process for the selection of Successful Bidder(s) for procurement of power for ‘long term’ through tariff based competitive bidding process under Case-1 bidding procedure for meeting the **Base Load** power requirements of the Procurers on the basis of international competitive bidding in accordance with the “Guidelines for Determination of Tariff by Bidding Process for Procurement of Power by Distribution Licensees” issued by Government of India, Ministry of Power under Section – 63 of the Electricity Act, 2003 and as amended from time to time. The responsibility of the Successful Bidder(s) would be to supply power to the Procurer(s) as per the terms and conditions of the RFP Documents.
2. **Bidding Process:**

The Authorized Representative seeks to qualify and select Successful Bidder(s) for supply of power as aforesaid through this bidding process. For the purpose of selection of the Successful Bidder(s), Bidders shall be required to submit both Non-Financial Bid and Financial Bid simultaneously in a single stage bidding process as per the timelines mentioned in para 10 of this notification. Bidders who meet the Qualification Requirement as specified in Clause 2.1 of the RFP will be Qualified Bidders and the Financial Bids of all such Qualified Bidders shall be opened and evaluated as per provisions of Clause 3.4 of the RFP for the purpose of selection of Successful Bidder(s).
3. **Procurement of power**

Procurer(s) intend(s) to procure **1000 MW** power at the Delivery Point(s) for a period of **25** years from the Scheduled Delivery Date in accordance with the terms of the Power Purchase Agreement (PPA). This procurement of power is being done under Case – 1 bidding procedure.
4. **Technology:** The Bidder is free to choose any power generation technology, including but not limited to sub-critical / supercritical, open / combined cycle, etc.
5. **Fuel:** The choice of fuel, including but not limited to coal or gas, it’s sourcing and transportation is left entirely to the discretion of the Bidder. The Successful Bidder(s) shall bear complete responsibility to tie up the fuel linkage and the infrastructural requirements for fuel transportation, handling and storage.
6. **Power generation source:** Bidders are free to supply from any source of power generation including but not limited to hydel power. In case supply of power is proposed from a hydel source the hydrology risk shall be entirely borne by the Bidders. However, if the available capacity of the Seller from a generating station is in excess of the total Contracted Capacity of the Seller, then this excess capacity shall be at the disposal of the Seller.
7. **Commencement of supply of power:**

The Successful Bidder(s) shall have to commence the supply of power on the Scheduled Delivery Date in accordance with the provisions of the PPA.

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**8. Tariff:**

The tariff shall be payable by the Procurer(s) in Indian Rupees, as per provisions of the PPA. Bidders shall quote the tariff as per the pre-specified structure mentioned in the RFP.

**9. Issue of RFP:**

The detailed terms and conditions for qualification of the Bidders and for Bid submission are indicated in the RFP. All those interested in purchasing the RFP may respond in writing to the Authorized Representative at the address given in para 11 below with a non-refundable fee of **Rs. 5,00,000/- (Rupees Five Lac only) or 11,500 US Dollars (US Dollars Eleven Thousand Five Hundred Only)**, in the form of a demand draft / banker's cheque / pay order drawn in favor of **Sr. AO (EA & Cash), Rajasthan Rajya Vidyut Prasaran Nigam Limited**, payable at Jaipur, latest by **30.03.09**. The RFP shall be issued to the Bidders on any working day from **25.02.09 to 30.03.09** between 10:00 hours (IST) to 17:00 hours (IST) by **RRVPNL** on written request and against payment of the above mentioned fee by any Bidder. In case where Bidders request the documents to be sent by post, the Procurer/ Authorized Representative shall promptly dispatch the RFP to such Bidder by registered mail/ air mail only upon receipt of written request and payment of the above mentioned fee by such Bidders. The Authorized Representative shall, under no circumstances, be held responsible for late delivery or loss of documents so mailed. The RFP can also be downloaded from [www.rajenergy.com](http://www.rajenergy.com) and [www.rvsn.co.in](http://www.rvsn.co.in). However, in such case interested Bidder can submit the Bid only on submission of non refundable fee of **Rs. 5,00,000/- (Rupees Five Lac only) or 11,500 US Dollars (US Dollars Eleven Thousand Five Hundred Only)** as mentioned above separately along with the Bid.

**10. Receipt and Opening of Bid:**

Bid must be delivered to the address as given in para 11 of this notification on or before **15:00** hours (IST) on **01.06.09** and the Non- Financial Bid will be opened on the same day at **15:30** hours (IST), in the presence of Bidder's representatives who wish to attend. If it is a public holiday on the last date for submission of the Bid, the submission and the receipt of the Bid shall be on the next working day at the place of submission of Bid, on which day the Non-Financial Bid received shall be opened. The Financial Bid shall be opened as per the time schedule given in Clause 2.14.1 of the RFP.

**11. Nodal Person for enquiries and clarifications**

All correspondence, clarifications in respect of the RFP and submission of the Bid shall be addressed to:

Name: **B. K. Makhija**  
Designation: **Chief Engineer (RPPC)**  
Address: **RRVPNL**  
**Vidyut Bhawan, Janpath, Jyoti Nagar**  
**Jaipur-302005 (Rajasthan)**  
Telefax: **+91 – 141 - 2740275**  
Email: **ppmrvpn@sancharnet.in**

**12.** All capitalized words and expressions used in this notification but not defined herein shall have the same meaning as ascribed to them in the RFP.

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### DISCLAIMER

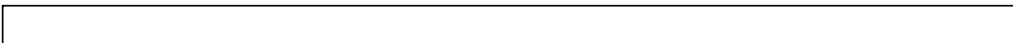
1. This Request for Proposal (RFP) document is not an agreement or offer by the **Rajasthan Rajya Vidyut Prasaran Nigam Limited** to the prospective Bidders or any other party. The purpose of this RFP is to provide interested parties with information to assist the formulation of their Bid. This RFP is based on material and information available in public domain.
2. This RFP, along with its Formats, is not transferable. The RFP and the information contained therein is to be used only by the person to whom it is issued. Save and except as provided in Clause 2.18 of the RFP, it shall not be copied or distributed by the recipient to third parties. In the event that the recipient does not continue with its involvement in the bidding process in accordance with this RFP, this RFP must be kept confidential.
3. While this RFP has been prepared in good faith, neither the Procurer/ Authorized Representative nor its employees or advisors/consultants make any representation or warranty express or implied as to the accuracy, reliability or completeness of the information contained in this RFP.
4. Neither the Procurer/ Authorized Representative, its employees nor its advisors / consultants will have any liability to any Bidder or any other person under the law of contract, tort, the principles of restitution or unjust enrichment or otherwise for any loss, expense or damage which may arise from or be incurred or suffered in connection with anything contained in this RFP, any matter deemed to form part of this RFP, the award for supply of power, the information supplied by or on behalf of Procurer/ Authorized Representative or its employees, any advisors/consultants or otherwise arising in any way from the selection process for the said supply of power.



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## **DEFINITIONS**

Any capitalized term, used but not defined in this RFP, shall have the meaning ascribed to such term in the RFP Documents, or the Bidding Guidelines, in that order. In absence of availability of definitions in the foregoing references, the capitalized terms shall be interpreted in accordance with the Electricity Act 2003, the CERC (Terms and Conditions of Tariff) Regulations 2004, Grid Code or any other relevant electricity law, rule or regulation prevalent in India, as amended or re-enacted from time to time, in that order.

### **The following terms are defined for use in this RFP:**

**“Affiliate”** shall mean a company that either directly or indirectly

- i. controls or
- ii. is controlled by or
- iii. is under common control with

a Bidding Company (in the case of a single company) or a Member (in the case of a Consortium) and **“control”** means ownership by one company of at least twenty six percent (26%) of the voting rights of the other company. As an illustration a chart is annexed hereto as Format 5.12;

**“Appropriate Commission”** shall mean the CERC, or the SERC or the Joint Commission referred to in Section 83 of the Electricity Act 2003, as the case may be;

**“Authorized Representative”** shall mean the body corporate authorized by the Procurer(s) to carry out the bidding process for the selection of the Successful Bidder(s) on their behalf as defined in Clause 1.1 of this RFP;

**“Base Load”** shall mean the required quantum of power as specified by the Authorized Representative at Sr. No. 4 of Clause 1.3.1 of this RFP;

**“Bid”** shall mean the Non-Financial Bid and the Financial Bid submitted by the Bidder, in response to this RFP, in accordance with the terms and conditions hereof.

**“Bidder”** shall mean Bidding Company or a Bidding Consortium submitting the Bid. Any reference to the Bidder includes Bidding Company / Bidding Consortium/ Consortium/ Member of a Bidding Consortium including its successors, executors and permitted assigns and Lead Member of the Bidding Consortium jointly and severally, as the context may require”;

**“Bidding Company”** shall refer to such single company that has submitted the Bid in accordance with the provisions of this RFP;

**“Bidding Consortium” or “Consortium”** shall refer to a group of companies that has collectively submitted the Bid in accordance with the provisions of this RFP;

**“Bid Bond”** shall mean the unconditional and irrevocable bank guarantee to be submitted along with the Bid by the Bidder under Clause 2.12 of this RFP, as per the prescribed Format 4.9;

**“Bid Deadline”** shall mean the last date and time for submission of Bid in response to this RFP as specified in Clause 2.8 of this RFP;

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**“Bidding Guidelines”** shall mean the “Guidelines for Determination of Tariff by Bidding Process for Procurement of Power by Distribution Licensees” issued by Government of India, Ministry of Power dated 19<sup>th</sup> Jan 2005 under Section – 63 of Electricity Act and as amended from time to time till the Bid Deadline;

**“Case -1 Bidding Procedure”** shall have the meaning as ascribed thereto in the Bidding Guidelines;

**“CERC”** shall mean the Central Electricity Regulatory Commission of India constituted under sub – section (1) of Section-76 of the Electricity Act, 2003 or its successors;

**“Conflict of Interest”** A Bidder may be considered to be in a Conflict of Interest with one or more Bidders in the same bidding process under this RFP if they have a relationship with each other, directly or indirectly through a common company, that puts them in a position to have access to information about or influence the Bid of another Bidder;

**“Consents, Clearances and Permits”** shall mean all authorizations, licenses, approvals, registrations, permits, waivers, privileges, acknowledgements, agreements, or concessions required to be obtained from or provided by any concerned authority for the purpose of setting up of the generation facilities and/or supply of power;

**“Contracted Capacity”** shall mean the net capacity of power (in MW) contracted between the Seller and the Procurer(s) at the Interconnection Point as provided in the Selected Bid as per Format 4.10 of this RFP;

**“Contract Performance Guarantee (CPG)”** shall have the meaning as per Clause 2.13 of this RFP;

**“Contract Year”** shall mean the period beginning on the Scheduled Delivery Date and ending on the immediately succeeding March 31 and thereafter each period of 12 months beginning on April 1 and ending on March 31 provided that the last Contract Year shall end on the last day of the term of the PPA;

**“CTU” or “Central Transmission Utility”** shall mean the utility notified by the Central Government under Section-38 of the Electricity Act 2003;

**“CTU Interface”** shall mean the point where

- i. the power from the power station switchyard bus of the Seller shall be injected into the interstate transmission system OR
- ii. the dedicated transmission line of the Seller shall connect the power station of the Seller to the interstate transmission system OR
- iii. the intrastate transmission system of the Seller’s state shall connect to the interstate transmission system for the purpose of transmitting power from the Seller’s power station;

**“Delivery Point”** shall mean the STU Interface(s) within the region of the Procurer(s), where power is delivered to the Procurer(s) after it is injected by the Seller at the Interconnection Point;





**“Effective Date”** shall mean the date from which the PPA becomes effective;

**“Electricity Act 2003”** shall mean the Electricity Act, 2003 and any rules, amendments, regulation, notifications, guidelines or policies issued there under from time to time.

**“Financial Bid”** shall mean Envelope II of the Bid, containing the Bidder’s Quoted Tariff as per the Format 4.10 of this RFP;

**“Financially Evaluated Entity”** shall mean the company which has been evaluated for the satisfaction of the financial requirement set forth in Clause 2.1.2.1 hereof;

**“Grid Code” / “IEGC” or “State Grid Code”** shall mean the Grid Code specified by the Central Commission under clause (h) of sub-section (1) of Section 79 of the Electricity Act and/or the State Grid Code as specified by the concerned State Commission referred under clause (h) of sub-section (1) of Section 86 of the Electricity Act, as applicable;

**“Injection Point”** in relation to each Financial Bid by a Bidder, shall mean either the CTU Interface or the Delivery Point as specified by the Bidder in Format 4.10 of this RFP;

**“Interconnection Point”** shall mean the point where the power from the power station switchyard bus of the Seller is injected into the interstate/intrastate transmission system(including the dedicated transmission line connecting the power station with the interstate/intrastate transmission system);

**“Law”** shall have the same meaning as ascribed thereto in the PPA;

**“Lead Member of the Bidding Consortium” or “Lead Member”** shall mean the Member which commits at least 51% equity stake in the Project Company and so designated by other Member(s) of the Bidding Consortium in accordance with the Consortium Agreement specified in Format 4.3 of this RFP;

**“Letter of Intent” or “LOI”** shall mean the letter to be issued by the Authorized Representative to the Successful Bidder(s) for supply of power pursuant to Clause 3.5 of the RFP;

**“Levelized Tariff”** shall mean the tariff calculated in accordance with the provisions of Clause 3.4.8 of the RFP;

**“Member of a Bidding Consortium” or “Member” or “Consortium Member”** shall mean each company in the Bidding Consortium which has executed the Consortium Agreement as provided in Format 4.3 of this RFP;

**“Minimum Bid Capacity”** shall mean the minimum capacity in MW specified by the Authorized Representative in Clause 1.3.1, for which the Bidder is required to submit its Bid;

**“Non Financial Bid”** shall mean Envelope I of the Bid containing the documents as specified in Clause 2.4.1.1 of the RFP;

**“Normative Availability”** shall carry the same meaning as defined in the PPA;



**“Parent Company”** shall mean a company that holds at least twenty six percent (26%) of the paid - up equity capital directly or indirectly in the Bidding Company or in the Member of a Bidding Consortium, as the case may be;

**“PPA”<sup>1</sup>** shall mean the agreement to be entered into between the Procurer(s) and the Seller pursuant to which the Seller shall supply power to the Procurer(s) as per the terms and conditions specified therein and a draft of which is attached hereto and marked as Enclosure 1 of Format 5.5 of this RFP, including all its schedules, annexures, and all amendments or modifications;

**“Procurer(s)”** shall mean the entity (ies) as specified in Clause 1.1 of this RFP;

**“Project Company”** shall mean the company, incorporated by the Bidder as per Indian laws, in accordance with Clause 2.2.8;

**“Qualification Requirements”** shall mean the qualification requirements as set forth in Clause 2.1 of this RFP;

**“Qualified Bidder(s)”** shall mean the Bidder(s) who, after evaluation of their Non Financial Bid as per Clauses 3.2 and 3.3, stand qualified for opening and evaluation of their Financial Bid;

**“Quoted Capacity Charges”** shall mean the sum total of Quoted Escalable Capacity Charges and Quoted Non Escalable Capacity Charges;

**“Quoted Energy Charges”** shall mean the sum total of Quoted Escalable Energy Charges and Quoted Non Escalable Energy Charges;

**“Quoted Escalable Energy Charges”** shall mean the charges quoted by the Bidder in column no. 7 or column no. 9 of its Financial Bid as per Format 4.10 of this RFP (applicable as per Clause 2.4.1.1(B)(ix) of this RFP);

**“Quoted Escalable Capacity Charges”** shall mean the charges as quoted by the Bidder in column no. 5 of its Financial Bid as per Format 4.10 of this RFP;

**“Quoted Escalable Fuel Handling Charges”** shall mean the charges as quoted by the Bidder in column no. 15 of its Financial Bid as per Format 4.10 of this RFP (applicable as per Clause 2.4.1.1(B) (ix) of this RFP);

**“Quoted Escalable Inland Transportation Charges”** shall mean the charges as quoted by the Bidder in column no. 11 of its Financial Bid as per Format 4.10 of this RFP (applicable as per Clause 2.4.1.1(B)(ix) of this RFP);

**“Quoted Escalable Overseas Transportation Charges”** shall mean the charges as quoted by the Bidder in column no. 13 of its Financial Bid as per Format 4.10 of this RFP (applicable as per Clause 2.4.1.1(B)(ix) of this RFP);

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<sup>1</sup> In case the Successful Bidder is supplying power from more than one generation source, then separate PPAs need to be executed for each such generation source.

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**“Quoted Non Escalable Capacity Charges”** shall mean the charges as quoted by the Bidder in column no. 4 of its Financial Bid as per Format 4.10 of this RFP;

**“Quoted Non Escalable Energy Charges”** shall mean the charges as quoted by the Bidder in column no. 6 or column no. 8 of its Financial Bid as per Format 4.10 of this RFP(applicable as per Clause 2.4.1.1(B)(ix) of this RFP);

**“Quoted Non Escalable Fuel Handling Charges”** shall mean the charges as quoted by the Bidder in column no. 14 of its Financial Bid as per Format 4.10 of this RFP(applicable as per Clause 2.4.1.1(B)(ix) of this RFP);

**“Quoted Non Escalable Inland Transportation Charges”** shall mean the charges as quoted by the Bidder in column no. 10 of its Financial Bid as per Format 4.10 of this RFP(applicable as per Clause 2.4.1.1(B)(ix) of this RFP);

**“Quoted Non Escalable Overseas Transportation Charges”** shall mean the charges as quoted by the Bidder in column no. 12 of its Financial Bid as per Format 4.10 of this RFP(applicable as per Clause 2.4.1.1(B)(ix) of this RFP);

**“Quoted Tariff”** shall mean the sum total of Quoted Capacity Charges and Quoted Energy Charges, as applicable, quoted by the Bidder as per the prescribed Format 4.10 and shall be construed to be at the Interconnection Point as mentioned in its Bid;

**“Requisitioned Capacity”** means the total aggregate power of **1000 MW** proposed to be contracted by the Procurer(s) with the Successful Bidder(s) through this bidding process for supply at the Delivery Point for the term of the PPA as per the terms and conditions specified therein;

**“RFP”** shall mean this Request for Proposal dated **25.02.09** along with all formats and RFP Documents attached hereto and shall include any modifications, amendments alterations or clarifications thereto;

**“RFP Documents”** shall mean the following documents to be entered into by the parties to the respective agreements in connection with the supply of power:

- a) PPA;
- b) Default Escrow Agreement;
- c) Agreement to Hypothecate-cum-deed of Hypothecation; and
- d) any other agreements designated as such, from time to time by the Procurer/Authorized Representative;

**“Scheduled Delivery Date”** shall mean **31.08.13** on which the Seller is required to start delivering the power at the Delivery Point as per the terms and conditions of the PPA;

**“Seller”** shall mean the Successful Bidder/or the Project Company, as the case may be who submit the Contract Performance Guarantee and executes the PPA and other RFP Documents with the Procurer(s) and who shall be responsible for supplying power to the Procurer(s) at the Delivery Point for the term of the PPA as per the terms and conditions specified therein;



“**SERC**” shall mean the State Electricity Regulatory Commission constituted under Section-82 of the Electricity Act, 2003 or its successors, and includes a Joint Commission constituted under sub-section (1) of Section 83 of the Electricity Act 2003;

“**Statutory Auditor**” shall mean the auditor of a Company appointed under the provisions of the Companies Act, 1956 or under the provisions of any other applicable governing law;

“**STU**” or “**State Transmission Utility**” shall mean the board or the government company specified as such by the State Government under sub-section (1) of Section 39 of the Act;

“**STU Interface(s)**” shall mean the point(s) at which the CTU network is connected to the intrastate transmission system of the Procurer(s)’s State(s), and at which the Procurer(s) agree to receive power up to the Requisitioned Capacity;

For generation source in the same state as that of the Procurer(s), the STU Interface shall be the bus-bar of the generating station from which power is contracted to be supplied, at an appropriate voltage level as specified by the STU.

“**Successful Bidder(s)**” shall mean the Bidder(s) selected by the Authorized Representative, pursuant to this RFP for supply of power by itself or through the Project Company as per the terms of the RFP Documents, and to whom a Letter of Intent has been issued;

“**Tariff**” shall mean the tariff as computed in accordance with Schedule 4 of the PPA;

“**Trading Licensee**” shall mean the Bidder which is an Electricity Trader and submits its Bid on the basis of an exclusive power purchase agreement executed with the entity developing the generation source from where the power is proposed to be supplied by the Bidder;

“**Ultimate Parent Company**” shall mean a company which directly or indirectly owns at least twenty six percent (26%) paid up equity capital in the Bidding Company or Member of a Consortium, (as the case may be) and/or in the Financially Evaluated Entity and such Bidding Company or Member of a Consortium, (as the case may be) and/or the Financially Evaluated Entity shall be under the direct control or indirectly under the common control of such company;



# SECTION - 1

## INTRODUCTION



## SECTION 1

### 1. INTRODUCTION

- 1.1 The Procurer(s) have authorized **Rajasthan Rajya Vidyut Prasaran Nigam Limited (RRVNL)** as its Authorized Representative to carry out the bidding process for the selection of Successful Bidder(s) for supply of power under Case-1 Bidding Procedure and have executed a Joint Deed Agreement as per Format 5.4. Accordingly the Authorized Representative, on behalf of **Jaipur Vidyut Vitran Nigam Limited (JVVNL), Ajmer Vidyut Vitran Nigam Limited (AVVNL) and Jodhpur Vidyut Vitran Nigam Limited (JdVVNL)**, hereinafter referred to as the Authorized Representative, acting through **Mr. B. K. Makhija, Chief Engineer (RPPC), RRVNL, Vidyut Bhawan, Janpath, Jyoti Nagar, Jaipur-302005 (Rajasthan)**, which expression shall also include the successors and permitted assigns of the Authorized Representative, hereby invites interested Bidders to purchase the RFP to participate in the bidding process for the selection of Successful Bidder(s) for procurement of power for **“long term”** through tariff based competitive bidding process under Case – 1 bidding procedure for meeting the **Base Load** power requirements of the Procurers on the basis of international competitive bidding in accordance with the “Guidelines for Determination of Tariff by Bidding Process for Procurement of Power by Distribution Licensees” issued by Government of India, Ministry of Power under Section – 63 of the Electricity Act, 2003 and as amended from time to time. The responsibility of the Successful Bidder(s) shall be to supply power to the Procurer(s) as per the terms and conditions of the RFP Documents.
- 1.2 The Authorized Representative proposes to select the Bidder(s) having the prescribed qualifications and whose Quoted Tariff is determined to be acceptable as per the provisions of Clause 3.5 to become Seller(s). The Seller(s) shall supply power to the Procurer(s) pursuant to and as per the terms and conditions of the PPA to be signed between the Procurer(s) and the Seller. The Procurer(s) shall pay to the Seller(s), the Quoted Tariff of the Successful Bidder(s) which has been adopted by the Rajasthan Electricity Regulatory Commission, as per the terms and conditions of the PPA.
- 1.3 **Power Procurement**
- 1.3.1 **Scope**

This bidding process is being carried out under Case – 1 bidding procedure as mentioned in the Bidding Guidelines, according to which the Bidder is free to choose any power generation source, any power generation technology and fuel type for supply of power. Further, all Bidders shall indicate the source of power generation from where the Contracted Capacity would be delivered and the type of fuel which shall be used. Supply of power is permitted from operational power plants or from power plants proposed to be commissioned on or before the Scheduled Delivery Date, subject to availability of reliable power over the term of the PPA.

Brief scope of power procurement is given as under:

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Sr. No	Scope	Details
1.	Contract Period (in years)	25 years
2.	Requisitioned Capacity (MW)	1000 MW for <b>Base Load</b> supply of power. During the evaluation of Bids and based on the competitiveness of the bid process, the Authorized Representative retains the right to increase or decrease the Requisitioned Capacity by a quantum of twenty percent (20%) of the quantum indicated herein.
3.	Minimum Bid Capacity <sup>2</sup>	<b>100 MW</b>
4.	Load Requirement	1000 MW Base Load
5.	Scheduled Delivery Date	<b>31.08.13</b> However, the Scheduled Delivery Date can be preponed on mutual consent of the Seller and the Procurer(s), subject to availability of transmission capacity, as per the provisions of the PPA.
6.	Interconnection Point	Bidders shall submit their Quoted Tariff at the Interconnection Point and specify the same in the Financial Bid as per Format 4.10 of this RFP; The PPA shall be signed between the Successful Bidder / Project Company and the Procurer(s) for the Contracted Capacity at the Interconnection Point.
7.	Injection Point	Bidders shall specify in their Financial Bid, the Injection Point nearest to their generation source which shall be used for evaluation purpose.;

<sup>2</sup> The Minimum Bid Capacity shall be decided by the Procurer/ Authorized Representative, which may generally be the lower of the two values: 10% of the Requisitioned Capacity or 50 MW. However, the Procurer/Authorized Representative shall be free to determine any quantum of power as the Minimum Bid Capacity.

Sr. No	Scope	Details
		<p>specified by the Bidder in its Financial Bid and shall be considered for evaluation.</p> <ul style="list-style-type: none"> <li>In case of Injection Point being a Delivery Point, no transmission charges or losses shall be considered for evaluation.</li> </ul>
8.	Transmission Losses	The transmission losses from the Interconnection Point to the Delivery Point shall be borne by the Procurer(s).
9.	Arranging Transmission Access	<p>Seller(s) shall be responsible for arranging transmission access from the Injection Point to the Delivery Point. Such arrangement shall be as per the regulations specified by the Appropriate Commission, as amended from time to time.</p> <p>The Seller(s) shall initiate action for development of the requisite transmission system from Injection Point to the Delivery Point by co-coordinating with the CTU and concerned STU in accordance with the relevant regulations of the Appropriate Commission.</p> <p>The Seller shall be wholly responsible to arrange transmission access from the Interconnection Point to the Injection Point.</p> <p>The Procurer(s) shall be wholly responsible to arrange transmission access from the station switchyard of the generation source in case of the generating source being in the same state as that of the Procurer(s).</p>
10.	Transmission Charges	<p>For transmission of power from the Injection Point to the Delivery Point, the Seller(s) shall be responsible to enter into a commercial arrangement with the CTU/STU, as the case may be, to bear the transmission charges as notified by the CERC/SERC, as the case may be, from time to time. Further, the Seller(s) shall then claim the reimbursement of such Transmission Charges from the Procurer(s).</p> <p>Transmission Charges, if any, for transmitting power from the Interconnection Point to the Injection Point shall be borne by the Seller and shall not be reimbursed by the Procurer(s).</p>



### 1.3.2 Evacuation of Power

The responsibility for evacuation of power beyond the Delivery Point will be of the Procurer(s), who shall ensure the interconnectivity of STU Interface(s) for evacuation of power.

### 1.3.3 Allocation of Requisitioned Capacity

The tentative allocation of Requisitioned Capacity among the Procurers is as per the following table.

Name of the Procurer	Power procurement by Procurer (MW)	Percentage of Requisitioned Capacity (%)
1. Jaipur Vidyut Vitran Nigam Limited (JVVNL)	360 MW	36 %
2. Ajmer Vidyut Vitran Nigam Limited (AVVNL)	360 MW	36 %
3. Jodhpur Vidyut Vitran Nigam Limited (JdVVNL)	280 MW	28 %
<b>Total</b>	<b>Requisitioned Capacity = 1000 MW</b>	<b>100%</b>

The Authorized Representative reserves the right to modify the above allocation among the Procurers, subject to a maximum variation of twenty percent (20%) of the capacity proposed to be procured by each Procurer. Such variation shall be admissible till the Effective Date.

The total Contracted Capacity of the Successful Bidder(s) shall be allocated and apportioned to the Procurers in the same proportion as mentioned above.

### 1.3.4 Details of the Procurer(s) containing the following information are enclosed separately as per Format 5.2 of this RFP;

- a) Last three years of the available audited accounts
- b) Last three years of the aggregate technical and commercial losses
- c) Details regarding existing tariff structure, consumer base
- d) Details relating to escrow arrangement

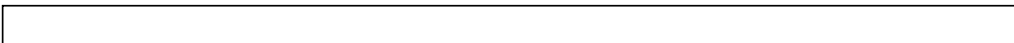
### 1.3.5 In accordance with Para 3.1 (i) of the Bidding Guidelines, the Authorized Representative has already sent an intimation to the Appropriate Commission about the initiation of the bidding process.

Further, the Procurer(s) has already obtained the approval of the Appropriate Commission for the quantum of power proposed to be procured”.

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# **SECTION - 2**

## **INFORMATION AND INSTRUCTIONS FOR BIDDERS**



## SECTION – 2

### 2 INFORMATION AND INSTRUCTIONS FOR BIDDERS

#### 2.1 Qualification Requirements

2.1.1 The Bidder should be a corporate entity duly incorporated under the relevant laws. Subject to Clauses 2.1.3 and 2.1.4, the Bidder must meet the Qualification Requirements independently as Bidding Company or as a Bidding Consortium with one of the Members acting as the Lead Member of the Bidding Consortium. Bidder will be declared as a Qualified Bidder based on meeting the Qualification Requirements specified below and as demonstrated based on the documentary evidence submitted by the Bidder in the Bid. Further, a Bidding Consortium can participate in the bidding process if any Member of the Consortium has purchased the RFP.

**Note:** A bidding company can be a generation company, a transmission licensee (owning generation facilities), a distribution company, a Trading Licensee or any other corporate entity which is willing to participate in the bidding process for providing supply of power to the Procurer(s).

2.1.2 The Bidder must fulfill the following Qualification Requirements specified in Clause 2.1.2.1 and 2.1.2.2:

2.1.2.1 **Networth:** Networth should be equal to or greater than the value **calculated at the rate of Rs. 0.50 Crore per MW of capacity offered by the Bidder in its Bid or equivalent USD** [Calculated as per provisions mentioned in Note below]. The computation of networth shall be based on unconsolidated audited annual accounts of any of the last three (3) financial years immediately preceding the Bid Deadline.

**Note:** For the Qualification Requirements, if data is provided by the Bidders in foreign currency, equivalent rupees of Networth will be calculated using bills selling exchange rates (card rate) USD / INR of State Bank of India prevailing on the date of closing of the accounts for the respective financial year as certified by the Bidders' banker.

For currency other than USD, Bidders shall convert such currency into USD as per the exchange rates certified by their banker prevailing on the relevant date and used for such conversion.

If the exchange rate for any of the above dates is not available, the rate for the immediately available previous day shall be taken into account.]

In case of more than one Financial Bid being submitted by the Bidder, the Networth must be fulfilled by such Bidder for the sum total of the capacities being offered by it in its Financial Bids.

Networth shall be computed in the following manner by the Bidder:

<b>Networth</b>	
=	Paid up share capital
Add:	Reserves
Subtract:	Revaluation Reserves

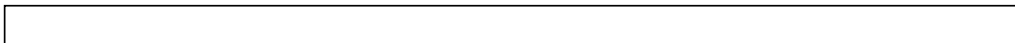
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Subtract: Intangible Assets  
Subtract: Miscellaneous Expenditures to the extent not written off and carry forward losses

For the purposes of meeting financial requirements, only unconsolidated audited annual accounts shall be used. However, audited consolidated annual accounts of the Bidder may be used for the purpose of financial requirements provided the Bidder has at least twenty six percent (26%) equity in each company whose accounts are merged in the audited consolidated accounts and provided further that the financial capability of such companies (of which accounts are being merged in the consolidated accounts) shall not be considered again for the purpose of evaluation of the Bid.

Bidders shall furnish documentary evidence as per the Format 4.6 (A), duly certified by Managing Director / Director/ Chief Executive Officer, being a full time director on the Board of the Company/ Manager, and the Statutory Auditor in support of their financial capability.

- 2.1.2.2 **Consents, Clearances and Permits:** The Bidder shall submit documentary evidence with regards to the following (In case the Bidder is an Trading Licensee, the Bidder shall ensure that the entity developing the power station has obtained such Consents, Clearances and Permits and the Bidder shall submit documentary evidence regarding the same in its Bid):
- a. Land: Requirement of land would be considered as indicated in the proposal filed with the competent authority for seeking environmental clearance. The Bidder should have acquired and have taken possession of at least 50% of the area of the land as mentioned above. In case of land to be acquired under the Land Acquisition Act, 1894, the Bidder shall submit copy of notification issued for such land under Section 4 of the Land Acquisition Act, 1894. In all other cases, the Bidder shall furnish documentary evidence (sale deed or any other equivalent documents) to establish the ownership of such land.
  - b. Fuel:
    - i. In case of domestic coal, the Bidder shall have made firm arrangements for fuel tie up either by way of mine allocation or fuel linkage. Such arrangement shall be for the quantity of fuel required to generate power from the power station at Normative Availability for the total installed capacity for the term of the PPA.
    - ii. In case of imported coal, the Bidder shall have either acquired mines having proven reserves for at least fifty percent (50%) of the quantity of coal required to generate power from the power station at Normative Availability for the total installed capacity OR shall have long term fuel supply agreement for at least fifty percent (50%) of the quantity of fuel required to generate power from the generation source for the total installed capacity for the term of the PPA.
    - iii. In case of domestic gas, the Bidder shall have made firm arrangements for fuel tie up by way of long term fuel supply agreement for the quantity of fuel required to generate power from the generation source for the total installed capacity for the term of the PPA.
    - iv. In case of RLNG, the Bidder shall have made firm arrangements for fuel tie up by way of long term fuel supply agreement for at least fifty



percent (50%) of the quantity of fuel required to generate power from the generation source for the total installed capacity for the term of the PPA.

- c. Water: The Bidder shall have acquired approval from the concerned state irrigation department or any other relevant authority for the quantity of water required for the power station.
- d. Environmental Clearance: The Bidder shall have submitted the requisite proposal, for the environmental clearance, to the concerned administrative authority responsible for according final approval in the central / state govt. as the case may be.
- e. Forest Clearance: (if applicable for the land of power station) The Bidder shall have submitted the requisite proposal, for the forest clearance, to the concerned administrative authority responsible for according final approval in the central / state govt., as the case may be.
- f. If the identified generation source is an existing power station, the Bidder shall submit the documentary evidence regarding commissioning of the power station and available surplus capacity equivalent to the capacity offered in its Bid in lieu of the requirements specified above in this Clause 2.1.2.2 (a) to (e).
- g. If the Bidder is a Trading Licensee, it shall have executed exclusive power purchase agreement(s) for the quantity of power offered in its Bid and shall provide a copy of the same as part of its Bid.

The documentary evidence as per Format 4.6 (B) shall be duly certified by Managing Director/ Director / Chief Executive Officer, being a full time director on the Board of the Company /Manager, in support of the above Consents, Clearances and Permits and other requirements.

- 2.1.2.3 In case the Bidder is a Bidding Company and wishes to incorporate a Project Company, all such Consents, Clearances and Permits if obtained in the name of a company other than the Project Company, the Bidder shall be responsible to get these Consents, Clearances and Permits transferred in the name of the Project Company in the event of being selected as the Successful Bidder.

In case the Bidder is a Bidding Consortium, all such Consents, Clearances and Permits shall be obtained in the name of the Lead Member and the Bidder shall be responsible to get these Consents, Clearances and Permits transferred in the name of the Project Company in the event of being selected as the Successful Bidder.

- 2.1.2.4 The Bidder shall undertake (as per Format 4.7) not to submit any other bid, on the basis of the same generation source and quantum of power from such source as mentioned in its Bid, in any bid process till the time of selection of Successful Bidder and issue of LOI or the termination of the process, which ever is earlier subject to a maximum period of one hundred and twenty (120) days from the Bid Deadline. If the Bidder is a Trading Licensee, it shall undertake (as per Format 4.7) not to submit any bid, on the basis of power purchase agreement submitted along



with its Bid for the same quantum of power and generation source specified therein, in any bid process till the time of selection of Successful Bidder and issue of LOI or the termination of the process, which ever is earlier subject to a maximum of period of one hundred and twenty (120) days from the Bid Deadline.

Bidders shall furnish the undertaking as per Format 4.7, duly certified by Managing Director/ Director / Chief Executive Officer, being a full time director on the Board of the Company /Manager.

- 2.1.3 If the Bid is submitted by a Bidding Consortium the financial requirement shall be met individually and collectively by all the Members in the Bidding Consortium. The financial requirement to be met by each Member of the Bidding Consortium shall be computed in proportion to the equity commitment made by each of them in the Project Company as per the Consortium Agreement (Format 4.3), forming part of its Non Financial Bid. Any Consortium, if selected as the Successful Bidder, shall, for the purpose of supply of power, incorporate a Project Company with equity participation by the Members as provided in the Consortium Agreement (Format 4.3) within fifteen (15) days of the issue of Letter of Intent.
- 2.1.4 Any Bidding Company may choose to incorporate a Project Company for the purpose of supply of power. If Bidding Company desires to incorporate a Project Company, it shall indicate this in Format 4.5.
- 2.1.5 The Bidder may seek qualification on the basis of financial capability of its Parent Company and / or it's Affiliate(s) for the purpose of meeting the Qualification Requirements. In case of the Bidder being a Bidding Consortium, any Member may seek qualification on the basis of financial capability of its Parent Company and / or its Affiliate(s). The financial capability of a particular Parent Company (ies) and / or Affiliates, shall not be used by more than one Bidder.

The determination of the relationship of Parent Company or Affiliate with the Bidding Company or with the Member of the Bidding Consortium, including the Lead Member, shall be as existing on the date seven (7) days prior to the Bid Deadline. Documentary evidence in form of a certification from a practicing Company Secretary or Statutory Auditor to establish such relationship shall be furnished by the Bidder along with the Bid.

If the Financially Evaluated Entity is an entity other than the Bidding Company or a Member of a Bidding Consortium, the Bidding Company or Member relying on such Financially Evaluated Entity will have to submit a legally binding undertaking supported by a Board resolution as per Format 4.8, from the Financially Evaluated Entity or its Parent Company / Ultimate Parent Company, as the case may be, that the obligation of the Bidding Company or the Member of the Consortium to submit a Contract Performance Guarantee, if selected, shall be deemed to be the obligations of the Financially Evaluated Entity or its Parent Company / Ultimate Parent Company, as the case may be, and in the event of any default whatsoever by the Successful Bidder in submitting the Contract Performance Guarantee, the same shall be submitted by such Financially Evaluated Entity or by the Parent Company / Ultimate Parent Company, as the case may be.



- 2.1.6 A Bidder shall submit only one response in the same bidding process, individually as Bidding Company or as a Member of a Bidding Consortium (including the Lead Member). It is further clarified that any of the Parent Company / Affiliate / Ultimate Parent Company of the Bidding Company or a Member of a Bidding Consortium shall not separately participate directly or indirectly in the same bidding process. Further, if any Bidder has a Conflict of Interest with other Bidder(s) participating in the same bidding process, the Bid of all such Bidder(s) shall be rejected.
- 2.1.7 Notwithstanding anything stated above, the Authorized Representative reserves the right to verify the authenticity of the documents submitted for meeting the Qualification Requirements and may request for any additional information / documents. The Authorized Representative reserves the right at its sole discretion to contact the Bidder's bank, lenders, financing institutions and any other persons as necessary to verify the Bidder's information/documents for the purpose of qualification.
- 2.1.8 If at any stage of the bidding process, any order / ruling is found to have been passed in the last five (5) years preceding the Bid Deadline by an Appropriate Commission or a competent court against any Bidder or its Affiliates for its material breach of any contract for supply of power having duration of contract in excess of one (1) year to any licensee in India, Bids from such Bidders shall be liable to be rejected. All Bidders shall confirm in accordance with Format 4.1 that no such order / ruling has been passed by an Appropriate Commission or a competent court against it or its Affiliates. Each Bidder shall also confirm that the bid security submitted by the Bidder or its Affiliates has not been forfeited either partly or wholly in any bid process under Case-1 or case -2 bidding procedure in the last five (5) years preceding the Bid Deadline.
- 2.1.9 The Qualified Bidder(s) will be required to continue to maintain compliance with the Qualification Requirements throughout the bidding process and till the execution of the PPA. Where the Financially Evaluated Entity is not the Bidding Company or a Member of a Bidding Consortium, as the case may be, the Bidding Company or Member shall continue to be an Affiliate of the Financially Evaluated Entity till execution of the PPA. Failure to comply with the aforesaid provisions shall make the Bid liable for rejection at any stage.

## **2.2 Submission of Bid by the Bidder**

- 2.2.1 The information and/or documents shall be submitted by the Bidder as per the formats specified in Section 4 (Formats for RFP) of this document.
- 2.2.2 Strict adherence to the formats wherever specified, is required. Wherever, information has been sought in specified formats, the Bidder shall refrain from referring to brochures / pamphlets. Non-adherence to formats and / or submission of incomplete information may be a ground for declaring the Bid as non-responsive. Each format has to be duly signed and stamped by the authorized signatory of the Bidder.
- 2.2.3 The Bidder shall furnish documentary evidence in support of meeting Qualification Requirements to the satisfaction of the Authorized Representative and shall furnish unconsolidated / consolidated audited annual accounts in support of meeting financial requirement, which shall consist of unabridged balance sheet, profit and loss account, profit appropriation account, auditors report, etc., as the case may be, of Bidding

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Company or each Member of a Consortium or Financially Evaluated Entity for the last three (3) financial years immediately preceding the Bid Deadline for the purpose of calculation of Networth.

#### **2.2.4 Bid submitted by a Bidding Consortium**

2.2.4.1 The Bid shall contain a legally enforceable Consortium Agreement entered amongst the Members in the Bidding Consortium, designating one of the Members to be the Lead Member (as per Format 4.3). There shall be only one Lead Member which shall continue to hold fifty one percent (51%) equity in the Project Company up to a period of two (2) years after commencement of supply of power and twenty six (26%) for a period of three (3) years thereafter as per provisions of Clause 2.7 of this RFP and Article 13.2 of the PPA. Each Member of the Bidding Consortium shall duly sign the Consortium Agreement making it liable for raising the required funds for its respective equity investment commitment as specified in the Consortium Agreement. In the absence of a duly executed Consortium Agreement, the Bid will not be considered for evaluation and will be rejected.

Provided however that the Lead Member of the Bidding Consortium shall be liable to the extent of one hundred percent (100%) of the total proposed commitment of equity investment in the Project Company, i.e., for both its own liability as well as the liability of the other Members.

Provided further that the Consortium Agreement shall not be amended without the prior written approval of the Authorized Representative.

2.2.4.2 The Lead Member shall designate one person to represent the Consortium in its dealings with the Authorized Representative. The person designated by the Lead Member shall be authorized through a Power of Attorney (as per Format 4.2 (a)) to perform all tasks including, but not limited to providing information, responding to enquiries, signing of Bid on behalf of the Consortium, etc. Additionally, the Bid shall also contain a Power of Attorney in original (as per Format 4.2 (b)) in favor of the Lead Member issued by the other Members of the Consortium.

2.2.4.3 The Bid shall also contain signed letter of consent as per Format 4.4 from each Member of the Consortium confirming that the Bid has been reviewed and each element of the Bid is agreed to by them including but not limited to the investment commitment in the Project Company.

#### **2.2.4.4 Point of contact in case of Bidding Consortium**

In case of Bid being submitted by a Consortium, the Lead Member of the Consortium shall be the single point of contact for the purposes of the Bid process, before the date of signing of last of the RFP Documents. Settlement of any dispute amongst the Consortium Members shall not be the responsibility of the Authorized Representative and the Authorized Representative shall not bear any liability whatsoever on this account.





## 2.2.5 Bid submitted by a Bidding Company

2.2.5.1 The Bidding Company should designate one person to represent the Bidding Company in its dealings with the Authorized Representative. The person should be authorized to perform all tasks including, but not limited to providing information, responding to enquiries, signing of Bid etc. The Bidding Company should submit, along with Bid, a Power of Attorney in original (as per Format 4.2 (a)), authorizing the signatory of the Bid.

## 2.2.6 Clarifications and Pre-bid Meeting

2.2.6.1 The Authorized Representative will not enter into any correspondence with the Bidders, except to furnish clarifications on the RFP and RFP Documents, if necessary. The Bidders may seek clarifications or suggest amendments to RFP and RFP Documents in writing, through a letter or by fax (and also soft copy by e-mail) to reach the Authorized Representative at the address, date and time mentioned in Clause 2.8. For any such clarifications or amendments, the Bidder should adhere to the Format 5.6 of the RFP. For the avoidance of any doubt, it is hereby clarified that there shall be no extension in the Bid Deadline on account of clarifications sought in accordance with this Clause 2.2.6.

2.2.6.2 The Bidder(s) or their authorized representative(s) is / are invited to attend pre-bid meeting(s), which will take place on date(s) as specified in Clause 2.8 , or any such other date as notified by the Authorized Representative. The time and venue of such meeting would be intimated at a later stage.

2.2.6.3 The purpose of the pre-bid meeting will be to clarify any issues regarding the RFP, including in particular, issues raised in writing by the Bidders as per the provisions of Clause 2.2.6.1.

2.2.6.4 Non-attendance at the pre-bid meeting will not be a cause for disqualification of a Bidder.

2.2.6.5 The Authorized Representative is not under any obligation to entertain / respond to suggestions made or to incorporate modifications sought for.

2.2.7 The drafts of the following RFP Documents have been attached to this RFP;

- a. PPA as per Format 5.5 Enclosure -1;
- b. Default Escrow Agreement as per Format 5.5 Enclosure -2;
- c. Agreement to Hypothecate-cum-deed of Hypothecation as per Format 5.5 Enclosure -3.

Upon finalization of the RFP Documents after the amendments as envisaged in Clause 2.3, the Procurer(s) shall initial all the pages of the PPA and the other RFP Documents and deliver copies of the same to the Bidders at least forty five (45) days prior to the Bid Deadline.

The RFP Documents shall be signed in required number of originals so as to ensure that one original is retained by each party to the agreement(s).

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## 2.2.8 Incorporation of a Project Company

2.2.8.1 In case of the Successful Bidder being a Bidding Consortium, it shall, within fifteen (15) days of the issue of the Letter of Intent, incorporate a Project Company provided such a Project Company has not been incorporated by the Bidder prior to the submission of the Bid. In case the Project Company has already been incorporated prior to the submission of the Bid as specified in the Consortium Agreement such Project Company shall be responsible to execute the RFP Documents. The investment in the Project Company shall be as per provisions of the Consortium Agreement and shall be subject to the provisions of Clause 2.7 of this RFP.

In case of the Successful Bidder being Bidding Company and choosing to incorporate a Project Company for supply of power, it shall incorporate the Project Company within fifteen (15) days of the issue of the Letter of Intent. In case the Project Company has already been formed by such Bidding Company prior to the submission of the Bid, the Bidding Company shall provide the details of such Project Company in its Bid. The investment in such Project Company incorporated by the Successful Bidder may be from any of the Affiliates and / or Ultimate Parent and shall be subject to the provisions of Clause 2.7 of this RFP.

2.2.8.2 The Project Company shall execute the RFP Documents and be responsible for supply of power to the Procurer(s) as per the provisions of the PPA.

2.2.9 Within thirty (30) days of the issue of the Letter of Intent, the Successful Bidder/ Project Company, as the case may be, shall:

- a. Provide a valid Contract Performance Guarantee as per the provisions of Clause 2.13 of this RFP; and thereafter
- b. Execute the PPA and other RFP Documents in required number of originals so as to ensure that one original is retained by each party to the agreement(s).

Provided that, if for any reason attributable to the Procurer(s), the above activities are not completed by the Successful Bidder(s)/ Project Company within the above period of thirty (30) days of the issue of Letter of Intent as mentioned in this Clause, such period of thirty (30) days shall be extended, on a day for day basis till the end of the Bid validity period.

If the generation source of the Successful Bidder is in the same state as that of the Procurer or the Successful Bidder intends to connect its generation source to the STU Interface through a dedicated transmission line, then within thirty (30) days of the issue of the Letter of Intent, the Procurer(s) and the Successful Bidder/Project Company shall be jointly responsible for agreement on the Delivery Point(s) for supplying power to the Procurer(s) and for incorporating the same in the PPA.

2.2.10 All stamp duties payable for executing the RFP Documents shall be borne by the Successful Bidder.

2.2.11 If the Successful Bidder(s) / Project Company fails or refuses to comply with any of its obligations under Clauses 2.2.8 and 2.2.9, and provided that the Procurer (s) and / or

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other parties to the respective RFP Documents are willing to execute the said documents, such failure or refusal on the part of the Successful Bidder/ Project Company shall constitute sufficient grounds for cancellation of the Letter of Intent. In such cases, the Authorized Representative shall be entitled to invoke the Bid Bond of the Successful Bidder(s) / Project Company.

## 2.3 Amendment of RFP

2.3.1 The Authorized Representative, for any reason, whether at its own initiative or in response to clarifications requested by any Bidder may modify the RFP, including the timelines specified in Clause 2.8.2, by issuance of addendum / modification / errata and / or a revised document. Revisions or amendments in the Bidding Guidelines may cause the Authorized Representative to modify, amend or supplement this RFP, including the RFP Documents to be in conformance with the Bidding Guidelines. Such document shall be notified in writing through a letter or fax or e-mail to all the entities to which the RFP has been issued and shall be binding on them. Such documents shall also be made available on the same website, [www.rajenergy.com](http://www.rajenergy.com) and [www.rvnpn.co.in](http://www.rvnpn.co.in). The Authorized Representative shall not be responsible for any delay in receipt of the addendum / modification / errata and / or revised document and receipt of the same by the Bidders shall be presumed by the Procurer(s) upon taking all reasonable steps to notify the Bidders in accordance with the means mentioned in the preceding sentence. In order to provide reasonable time to the Bidders to take the modification into account in preparing their Bid, or for any other reasons, the Authorized Representative may, at its discretion, extend the Bid Deadline. Late receipt of any addendum / modification / errata and / or revised document will not relieve the Bidder from being bound by that modification or the Bid Deadline. All such amendments/modifications shall be issued at least forty-five (45) days prior to the Bid Deadline.

2.3.2 In case Bidders need any further clarifications not involving any amendments in respect of the final RFP and RFP Documents, they should ensure that written request for such clarification is delivered to the Authorized Representative at least fifteen (15) days prior to the Bid Deadline as mentioned in Clause 2.8, the Authorized Representative may issue clarifications only, at its sole discretion, which is considered reasonable by it. Any such clarification issued shall be sent to all the Bidders to whom the RFP has been issued. Such clarifications shall also be made available on the same website, [www.rajenergy.com](http://www.rajenergy.com) and [www.rvnpn.co.in](http://www.rvnpn.co.in). Clarifications sought after this date shall not be considered in any manner and shall be deemed not to have been received. There shall be no extension in Bid Deadline on account of clarifications sought as per this clause.

## 2.4 Bidding Process

### 2.4.1 Bid Formats

2.4.1.1 The Bid in response to this RFP shall be submitted by the Bidders in the manner provided in Clause 2.10. The Bid shall comprise of the following:

**(A) Envelope I – Non- Financial Bid comprising of:**

- i. Covering Letter as per prescribed Format 4.1

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- ii. Original power of attorney issued by the Bidding Company or the Lead Member of the Consortium, as the case may be, in favor of the authorized person signing the Bid, in the form attached hereto as Format 4.2.(a). Additionally, in case of a Bidding Consortium, the Bid should also contain a Power of Attorney in original (as per Format 4.2 (b)) in favor of the Lead Member issued by the other Members of the Consortium.

Provided that in the event the Bidding Company or any Member of the Bidding Consortium, as the case may be, is a foreign entity, it may submit Board resolutions in place of Power of Attorney for the purpose of fulfilling the above requirements;

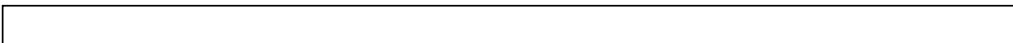
Provided further that such Board resolutions, as specified above, in case of a foreign entity, shall be supported by an unqualified opinion issued by the legal counsel of such foreign entity, stating that the Board resolutions are in compliance with the applicable laws of the respective jurisdictions of the issuing company and the authorizations granted therein are true and valid. In the case of a foreign entity, in the event, any and/or all of the documents/resolutions are in any other language other than English, then a duly notarized copy of such translation shall also be required to be submitted.

- iii. Consortium Agreement as per prescribed Format 4.3;
- iv. Letter of Consent from the Consortium Members as per prescribed Format 4.4;
- v. Bidder's composition and ownership structure as per prescribed Format 4.5;
- vi. Details for meeting Qualification Requirement as per the prescribed Format 4.6 along with documentary evidence for the same as specified in Clause 2.1;
- vii. Bidders' Undertaking as per the prescribed Format 4.7 (A) and Undertakings from the Financially Evaluated Entity or its Parent Company / Ultimate Parent Company as per Format 4.7 (B);

Provided further, in case the Bidding Company or Member of a Consortium, (as the case may be) holds at least twenty-six percent (26%) equity in such Financially Evaluated Entity, whose credentials have been considered for the purpose of meeting the Qualification Requirements as per the RFP, undertaking as per Format 4.7 (B) shall not be required from the Financially Evaluated Entity;

- viii. Board Resolution of the Financially Evaluated Entity of the Bidding Company or each Member of the Bidding Consortium as per prescribed Format 4.8, duly certified by the Company Secretary or the Managing Director undertaking to provide the entire Contract Performance Guarantee in the event of failure of the Bidding Company / Member of the Consortium to do so; or

Board Resolution of the Parent or Ultimate Parent of the Financially Evaluated Entity referred to above, as per prescribed Format 4.8, duly certified by the Company Secretary or the Managing Director undertaking to provide the entire Contract Performance Guarantee in the event of failure of the Bidding Company / Member of the Consortium to do so.



Provided that such Board resolutions, as specified above, in case of a foreign entity, shall be supported by an unqualified opinion issued by the legal counsel of such foreign entity, stating that the board resolutions are in compliance with the applicable laws of the respective jurisdictions of the issuing company and the authorizations granted therein are true and valid.

- ix. Bid Bond, as per the prescribed format 4.9;
- x. Checklist for Bid submission requirements as prescribed in Format 4.11;
- xi. Disclosure as per Format 4.12 regarding participation of any related companies in this bidding process;
- xii. Details of generation source and primary fuel as prescribed in Format 4.13;
- xiii. Initialed RFP Documents as per Format 5.5.

**(B) Envelope II – Financial Bid as per Format 4.10.**

The Bidder shall inter-alia take into account the following while preparing and submitting the Financial Bid as per the prescribed Format 4.10, duly signed by an authorized signatory.

- i. The Bidder shall submit their Quoted Tariff at the Interconnection Point and shall specify the same in its Financial Bid as prescribed in Format 4.10 of this RFP;
- ii. More than one Financial Bid can be submitted by the Bidder for supply of power provided that not more than one Financial Bid from a Bidder is from the same generation source and each Financial Bid is separately submitted in accordance with this Clause 2.4.1.1 (B). For these purposes, more than one unit at the same plant location but using different fuel/different fuel source shall be considered as the same generation source.
- iii. The Qualification Requirements for the Bidder would be evaluated for the total quantum of power offered by a Bidder from various generation sources:
- iv. The Bidder may quote for any quantum of power up to the Requisitioned Capacity for the entire term of the PPA, subject to the Minimum Bid Capacity.
- v. From each generation source, the Bidder may submit fractions of total capacity offered which it is willing to supply at the same quoted tariff as specified in Format 4.10.
- vi. The Bidder shall quote the Quoted Escalable Capacity Charges and Quoted Non Escalable Capacity Charges. In case of Quoted Escalable Capacity Charges, the Bidder shall quote charges only for the first Contract Year after commencement of supply of power as per the terms of the PPA.
- vii. The Quoted Escalable Capacity Charges and Quoted Non Escalable Capacity

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Charges for each Contract Year shall be based on the Normative Availability and shall include the cost of secondary fuel.

- viii. Bidders shall have the option to quote firm Quoted Capacity Charges and / or firm Quoted Energy Charges for the term of the PPA, i.e. where the Quoted Escalable Capacity Charges and / or Quoted Escalable Energy Charges shall be 'nil' for all the Contract Years.
- ix. The Bidder shall quote the following Quoted Energy Charges as applicable.

<i>Scenario 1</i>	<i>Scenario 2</i>	<i>Scenario 3</i>	<i>Scenario 4</i>	<i>Scenario 5</i>	<i>Scenario 6</i>
<b>Power generation source with captive coal block</b>	<b>Power generation source linkage based coal</b>	<b>Power generation source with imported coal</b>	<b>Power generation source with imported gas (RLNG)</b>	<b>Power generation source with domestic (pipeline) gas</b>	<b>Power generation source with hydro</b>
Quoted Escalable Energy Charge (in Rs./kWh)	Quoted Escalable Energy Charge (in Rs./kWh)	Quoted Escalable Energy Charge (in US\$/kWh)	Quoted Escalable Energy Charge (in US\$/ kWh)	Quoted Escalable Energy Charge (in Rs./kWh)	Quoted Non Escalable Energy Charges (in Rs./kWh)
Quoted Non-Escalable Energy Charge(in Rs./kWh)	Quoted Non-Escalable Energy Charge(in Rs./kWh)	Quoted Non-Escalable Energy Charge (in US\$/kWh)	Quoted Non-Escalable Energy Charge (in US\$/ kWh)	Quoted Non-Escalable Energy Charge (in Rs./kWh)	
Quoted Escalable Inland Transportation Charge (in Rs./kWh)	Quoted Escalable Inland Transportation Charge (in Rs./kWh)	Quoted Escalable Overseas Transportation Charge (in US\$/kWh)	Quoted Escalable Overseas Transportation Charge (in US\$/kWh)	Quoted Escalable Inland Transportation Charge (in Rs./kWh)	
Quoted Non Escalable Inland Transportation Charge (in Rs./kWh)	Quoted Non Escalable Inland Transportation Charge (in Rs./kWh)	Quoted Escalable Inland Transportation Charge (in Rs./kWh)	Quoted Escalable Inland Transportation Charge (in Rs./kWh)	Quoted Non Escalable Inland Transportation Charge (in Rs./kWh)	
		Quoted Non Escalable Overseas Transportation Charge (in US\$/kWh)	Quoted Non Escalable Overseas Transportation Charge (in US\$/kWh)		
		Quoted Non Escalable Inland Transportation Charge (in Rs./kWh)	Quoted Non Escalable Inland Transportation Charge (in Rs./kWh)		

<i>Scenario 1</i>	<i>Scenario 2</i>	<i>Scenario 3</i>	<i>Scenario 4</i>	<i>Scenario 5</i>	<i>Scenario 6</i>
<b>Power generation source with captive coal block</b>	<b>Power generation source linkage based coal</b>	<b>Power generation source with imported coal</b>	<b>Power generation source with imported gas (RLNG)</b>	<b>Power generation source with domestic (pipeline) gas</b>	<b>Power generation source with hydro</b>
		Quoted Escalable Fuel Handling Charge (in Rs./kWh)	Quoted Escalable Fuel Handling Charge (in Rs./kWh)		
		Quoted Non-Escalable Fuel Handling Energy Charge (in Rs./kWh)	Quoted Non-Escalable Fuel Handling Energy Charge (in Rs./kWh)		

- x. Ratio of minimum and maximum Quoted Capacity Charges during the term of the PPA shall not be less than zero point seven (0.7) and this ratio shall be applied only at the Bid evaluation stage on the Quoted Capacity Charges after duly escalating the Quoted Escalable Capacity Charge on the basis of the escalation rates specified in Clause 3.4.4.
- xi. The Quoted Tariff, as in Format 4.10, shall be an all inclusive Tariff up to the Interconnection Point and no exclusions shall be allowed. The Bidder shall take into account all costs including capital and operating costs, statutory taxes, levies, duties while quoting such Tariff. It shall also include any applicable transmission costs and transmission losses from the generation source up to the Interconnection Point. Availability of the inputs necessary for supply of power shall be ensured by the Seller and all costs involved in procuring the inputs (including statutory taxes, duties, levies thereof) at the plant location must be reflected in the Quoted Tariff. Appropriate transmission charges from the Injection Point to the Delivery Point as per Format 5.10 shall be added for Bid evaluation purpose.
- xii. The Bidders should factor in the cost of the secondary fuel into the Quoted Tariff and no separate reimbursement shall be allowed on this account.

**2.4.1.2 Commencement of Supply of Power to Procurer(s)**

The Seller shall at all times be responsible, at its own cost and risk for the commencement of supply power to the Procurer(s) as per the terms of the PPA.

- 2.4.1.3 Wherever information has been sought in specified formats, the Bidders shall furnish the details as per the prescribed formats and shall refrain from referring to any other document for providing any information required in the prescribed format.

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## 2.5 The Bidder should note that:

- (a) If any Bidder conceals any material information or makes a wrong statement or misrepresents facts or makes a misleading statement in its Bid, in any manner whatsoever in order to create circumstances for the acceptance of its Bid, the Authorized Representative reserves the right to reject such Bid or cancel the Letter of Intent, if issued. If such event is discovered after the Effective Date, consequences specified in the PPA shall apply.
- (b) If for any reason the Bid of any Successful Bidder is rejected or Letter of Intent issued to such Successful Bidder is cancelled, the Authorized Representative may:
  - i. Consider the next lowest Financial Bid from other than the Successful Bidder(s) whose Bids are responsive and valid; or
  - ii. Annul the bid process; or
  - iii. Take any such measure as may be deemed fit in the sole discretion of the Authorized Representative.
- (c) The Authorized Representative reserves the right to accept the offer of the Bidder for any quantum of power up to the quantum offered by it, subject to the Minimum Bid Capacity, and considering the balance Requisitioned Capacity (after considering the quantum of power offered by Successful Bidder(s) in Clause 3.5.3).
- (d) Bid submitted by the Bidders, within the Bid Deadline, shall become the property of the Authorized Representative] and shall not be returned to the Bidders;
- (e) Language of the Bid shall be English only;
- (f) Bidders shall mention the name of the contact person and complete address of the Bidder in the covering letter as per Format 4.1;
- (g) The Authorized Representative may, at its sole discretion, ask for additional information/ document and/ or seek clarifications from a Bidder after the Bid Deadline, inter alia, for the purposes of removal of inconsistencies or infirmities in its Bid. However, no change in the substance of the Quoted Tariff shall be sought or permitted by the Procurer/ Authorized Representative.
- (h) Non submission and / or submission of incomplete data / information required under the provisions of the RFP shall not be construed as waiver on the part of the Authorized Representative of the obligation of the Bidders to furnish the said data / information unless the waiver is in writing.
- (i) The Authorized Representative may verify the Bidder's financial data by checking with the Bidder's lenders / bankers / financing institutions / any other person as necessary.

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- (j) The Bidders shall satisfy themselves, on receipt of the RFP, that the RFP is complete in all respects. Intimation of any discrepancy shall be given to the Authorized Representative at the address provided in para 11 of the notification to this RFP immediately. If no intimation is received from any Bidder within ten (10) days from the date of issue of this RFP or from the date on which it was made available on [www.rajenergy.com](http://www.rajenergy.com) and [www.rvpn.co.in](http://www.rvpn.co.in), it shall be considered that the issued document, complete in all respects, has been received by the Bidder.
- (k) This RFP document includes statements, which reflect the various assumptions arrived at by the Authorized Representative in order to give a reflection of the current status in the RFP. These assumptions may not be entirely relied upon by the Bidders in making their own assessments. This RFP does not purport to contain all the information each Bidder may require and may not be appropriate for all persons. Each Bidder should conduct its own investigations and analysis and should check the accuracy, reliability and completeness of the information in this RFP and obtain independent advice from appropriate sources.

## **2.6 Bidder to inform itself fully**

- 2.6.1 The Bidder shall make independent enquiry and satisfy itself with respect to all the required information, inputs, conditions and circumstances and factors that may have any effect on its Bid. Once the Bidder has submitted the Bid, the Bidder shall be deemed to have examined the laws and regulations in force in India, the grid conditions, and fixed its price taking into account all such relevant conditions and also the risks, contingencies and other circumstances which may influence or affect the supply of power. Accordingly, the Bidder acknowledges that, on being selected as Successful Bidder, it shall not be relieved from any of its obligations under the RFP Documents nor shall be entitled to any extension of time for commencement of supply or financial compensation for any reason whatsoever.
- 2.6.2 The technical requirements of integrated grid operation are specified in the Indian Electricity Grid Code (IEGC). The Bidders should particularly acquaint themselves with the requirements of connection conditions, operating code for regional grids, scheduling and dispatch code etc. The Bidders are also advised to fully familiarize themselves with the real time grid conditions in India. Information regarding grid parameters such as voltage and frequency is readily available on the websites of Regional Load Dispatch Centres. The protection trip setting of the generation on under frequency df/dt and defense plan are coordinated at the RPC forum in consultation with all stakeholders duly taking into account the design parameters of the various machines.

In their own interest, the Bidders are requested to familiarize themselves with the Electricity Act, 2003, the Income Tax Act 1961, the Companies Act, 1956, the Customs Act, the Foreign Exchange Management Act 1999, IEGC, the Environment Protection Act 1986 and Forest (Conservation) Act 1980, the Land Acquisition Act 1984, the regulations framed by regulatory commissions and all other related acts, laws, rules and regulations prevalent in India, as amended from time to time. The Authorized Representative shall not entertain any request for clarifications from the Bidders regarding the same. Non-awareness of these laws or such information shall not be a reason for the Bidder to request for extension in Bid Deadline. The Bidder



undertakes and agrees that, before submission of its Bid; all such factors as generally stated above, have been fully investigated and considered while submitting the Bid.

- 2.6.3 The Bidder shall familiarize itself with the procedures and time frames required to obtain all Consents, Clearances and Permits required for the supply of power to Procurer(s). The Procurer(s) shall have no liability to obtain any of the Consents, Clearances and Permits required for setting up of the generation facilities and/ or supply of power.

## **2.7 Minimum Equity holding/Equity Lock-In**

- 2.7.1 The equity shareholding of the Lead Member in case the Successful Bidder is a Bidding Consortium OR the Successful Bidder in case the Successful Bidder is a Bidding Company in the issued and paid up equity share capital of the Seller shall not be less than the following:
- a) Fifty One percent (51%) from Effective Date up to a period of (2) two years after commencement of supply of power; and
  - b) Twenty Six (26%) for a period of three (3) years thereafter.
- 2.7.2 Similarly, in case of the Successful Bidder being a Bidding Company, the minimum aggregate equity share holding of the investing entity(ies) in the issued and paid up equity share capital of the Project Company, if formed, shall be the same as specified in Clause 2.7.1.
- 2.7.3 In case of a Bidding Consortium, any Member, other than the Lead Member, shall be allowed to divest its equity as long as the Lead Member holds the minimum equity specified in Clause 2.7.1 (a) and (b) above. In case of a Bidding Company, any investing entity(ies) shall be allowed to divest its equity as long as the Successful Bidder hold the minimum aggregate equity specified in Clause 2.7.1(a) and (b) above.
- 2.7.4 The Successful Bidder may invest in the equity share capital of the Project Company through its Affiliate(s) or Ultimate Parent Company or Parent Company (ies), the investing entities. If the Successful Bidder so invests through any Affiliate(s) or Ultimate Parent Company or Parent Company(ies), the Successful Bidder shall be liable to ensure that minimum equity holding/lock-in limits specified above are still maintained.
- 2.7.5 If equity is held by the Affiliates, Parent Company or Ultimate Parent Company, then such Affiliate, Parent Company or Ultimate Parent Company shall be permitted to transfer its shareholding in the Project Company to another Affiliate or to the Parent Company / Ultimate Parent Company. If any such shareholding entity, qualifying as an Affiliate/ Parent Company/ Ultimate Parent Company, is likely to cease to meet the criteria to qualify as an Affiliate / Parent Company / Ultimate Parent Company, the shares held by such entity shall be transferred to another Affiliate / Parent Company / Ultimate Parent Company.

All transfers of shareholding of the Project Company by any of the entities referred to above shall be after prior written permission from the Procurer(s).

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2.7.6 For computation of effective equity holding, the equity holding of the Successful Bidder or its Ultimate Parent Company in such Affiliate(s) or Parent Company and the equity holding of such Affiliate(s) or Ultimate Parent Company in the Seller shall be computed in accordance with the example given below:

If the Parent Company or the Ultimate Parent Company of the Successful Bidder A directly holds thirty percent (30%) of the equity in the Seller, then holding of Successful Bidder A in the Seller shall be thirty percent (30%);

If Successful Bidder A holds thirty percent (30%) equity of the Affiliate and the Affiliate holds fifty percent (50%) equity in the Seller, then, for the purposes of ascertaining the minimum equity / equity lock-in requirements specified above, the effective equity holding of Successful Bidder A in the Seller shall be fifteen percent (15%), (i.e.,  $30\% * 50\%$ );

2.7.7 The provisions as contained in this clause and Article 15.2 of PPA shall override the terms of the Consortium Agreement submitted as a part of Bid.

2.7.8 The provisions contained in Clause 2.7.1 to Clause 2.7.6 shall not be applicable if the Bidding Company is a Trading Licensee or in case of a Bidding Company bidding on its own name, meeting all Qualification Requirements on its own and not forming a separate Project Company. However the Trading Licensee in such case shall ensure that similar provisions as contained in Clause 2.7.1 to Clause 2.7.6 are incorporated in the exclusive power purchase agreement submitted by the Trading Licensee along with its Bid. In such case, the aforesaid provisions shall be applicable with respect to the majority investor in the entity developing the generation source from where the power is proposed to be supplied by the Bidder as mentioned in the Bid by the Trading Licensee. Such majority investor shall be identified and specified in the power purchase agreement submitted by the Trading Licensee.

## 2.8 Due Dates

2.8.1 The Bidders should submit the Bids so as to reach the address specified below by 15:00 hrs (IST) on 01.06.09:

**B. K. Makhija**  
**Chief Engineer (RPPC)**  
**Rajasthan Rajya Vidyut Prasaran Nigam Limited**  
**Vidyut Bhawan, Janpath, Jyoti Nagar**  
**Jaipur-302005 (Rajasthan)**

2.8.2 The following shall be the time schedule for completion of the bidding process

Event	Schedule
Date of issue of RFP	25.02.09
Submission of written clarification/amendments if any, on the RFP / RFP Documents by the Bidders.	12.03.09
Pre-Bid Meeting(s) (if required)	23.03.09

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Revision of RFP and RFP Documents (if required) and issuance of revised RFP and RFP Documents	15.04.09
Bid submission and opening of Non Financial Bid	01.06.09
Opening of Financial Bid of Qualified Bidders	30.07.09
Shortlisting of Successful Bidder(s) and issue of LOI	10.08.09
Signing of RFP Documents	31.08.09

2.8.3 The duration for a Bid process shall not exceed a maximum duration of 195 days, irrespective of any modification/ amendment to the RFP and/or RFP Documents. In the event that the Bid process has not been completed in such time limit, the Authorized Representative shall obtain approval from the Appropriate Commission for extension or the cancellation of the same.

**2.9 Validity of the Bid**

2.9.1 The Bidder shall submit the Bid which shall remain valid up to one hundred and twenty (120) days after the Bid Deadline (“**Bid Validity**”). The Authorized Representative reserve the right to reject any Bid which does not meet the aforementioned validity requirement.

2.9.2 The Authorized Representative may solicit the Bidders’ consent for an extension of the period of validity of the Bid. The request and the response in this regard shall be in writing. In the event any Bidder refuses to extend its Bid validity as requested by the Authorized Representative, the Authorized Representative shall not be entitled to invoke the Bid Bond. A Bidder accepting the Authorized Representative request for validity extension shall not be permitted to modify its Bid and such Bidder shall, accordingly, extend the validity of the Bid Bond as requested by the Authorized Representative and further undertake not to participate in any bid process as per Clause 2.1.2.4 within seven (7) days of such request, failing which the Bid shall not be considered as valid.

**2.10 Method of Submission**

2.10.1 Bids are to be submitted in a single closed cover envelope (as mentioned in Clause 2.10.2) containing Envelope I (Non-Financial Bid) and Envelope II (Financial Bid) each one duly closed separately. Envelope I (Non-Financial Bid) and Envelope II (Financial Bid) should be transcript in the following way;

**Envelope I (Non-Financial Bid)  
Superscript -**

“Bid for selection of Seller(s) for procurement of power on long term basis under Case – 1 bidding procedure

Name of the Bidder - .....

Due for opening on .....

Envelope I: Non Financial Bid”

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**Envelope II (Financial Bid)  
Superscript -**

“Bid for selection of Seller(s) for procurement of power on long term basis under Case – 1 bidding procedure

Name of the Bidder .....

Due for opening on: .....

Envelope II: Financial Bid ”

- 2.10.2 Envelope I (Non-Financial Bid) and Envelope II (Financial Bid) (mentioned in Clause 2.10.1) for the Bid to be submitted by Bidders should be packed in a single closed cover envelope, with the following superscript:

“Bid for selection of Seller(s) for procurement of power on Long term basis under Case – 1 bidding procedure”

Due for opening on **30.07.09**

**B. K. Makhija**  
**Chief Engineer (RPPC)**  
**Rajasthan Rajya Vidyut Prasaran Nigam Limited**  
**Vidyut Bhawan, Janpath, Jyoti Nagar**  
**Jaipur-302005 (Rajasthan)**

“Name of the Bidder .....”  
*[Insert name of Bidder]*

- 2.10.3 The Bidders have the option of sending their Bid either by registered post; or speed post; or courier; or by hand delivery, so as to reach the Authorized Representative by the Bid Deadline. Bids submitted by telex / telegram / fax / e-mail shall not be considered under any circumstances. The Authorized Representative shall not be responsible for any delay in receipt of the Bid. Any Bid received after the Bid Deadline shall be returned unopened.
- 2.10.4 It may be noted that Non-Financial Bid (Envelope I) shall not contain any information/document relating to Financial Bid. If Non-Financial Bid contains any such information / documents, the Authorized Representative shall not be responsible for premature opening of the Financial Bid.
- 2.10.5 All pages of the Bid, except for the Bid Bond (format 4.9), and any other document executed on non-judicial stamp paper, forming part of the Bid and corrections in the Bid, if any, must be signed by the authorized signatory on behalf of the Bidder. It is clarified that the same authorized signatory shall sign all pages of the Bid. However, any published document submitted with the Bid shall be signed by the authorized signatory at least on the first and last page of such document.

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2.10.6 Bidders shall submit the Bid one (1) original plus **two (2)** copies, duly signed by the authorized signatory of the Bidder. The original Bid shall be clearly marked "ORIGINAL", and all other copies are to be clearly marked "COPY OF BID". In the event of any discrepancy between the original and the accompanying copies, only the original shall prevail.

2.10.7 No change or supplemental information to a Bid will be accepted after the Bid Deadline, unless the same is requested for by the Authorized Representative as per Clause 2.5 (g).

Provided that a Bidder shall always have the right to withdraw or modify its Bid before the Bid Deadline. In cases where the Bid is withdrawn by the Bidder before the Bid Deadline, then such Bid shall be returned unopened.

2.10.8 If the outer cover envelope or Envelope I (Non-Financial Bid) or Envelope II (Financial Bid) is not closed and not transcribed as per the specified requirement, the Authorized Representative will assume no responsibility for the Bid's misplacement or premature opening.

## **2.11 Preparation Cost**

2.11.1 The Bidder shall be responsible for all the costs associated with the preparation of the Bid and participation in discussions and attending Pre-bid meetings, and finalization and execution of the RFP Documents, etc., Authorized Representative shall not be responsible in any way for such costs, regardless of the conduct or outcome of this Bid process.

2.11.2 All those interested in purchasing the RFP may write to the Authorized Representative with a non-refundable fee of **Rs. 5,00,000/- (Rupees Five Lac only) or 11,500 US Dollars (US Dollars Eleven Thousand Five Hundred Only)**, in the form of a demand draft / banker's cheque / pay order drawn in favor of **Sr. AO (EA & Cash), Rajasthan Rajya Vidyut Prasaran Nigam Limited**, payable at Jaipur, latest by **30.03.09**. The RFP shall be issued to a Bidder on any working day from **25.02.09 to 30.03.09** between 10:00 hours (IST) to 17:00 hours (IST) by the RRVPNL, on written request and against payment of the above mentioned fee. In case where a Bidder requests the RFP and RFP Documents to be sent by post, the Authorized Representative shall promptly dispatch the RFP and RFP Documents to such Bidder by registered mail/ air mail only upon receipt of written request and payment of the above mentioned fee from such Bidder. The Authorized Representative shall, under no circumstances, be held responsible for late delivery or loss of documents so mailed. The RFP and RFP Documents can also be downloaded from [www.rajenergy.com](http://www.rajenergy.com) and [www.rvpn.co.in](http://www.rvpn.co.in). However, in such case the Bidder can submit the Bid only on submission of a non refundable fee of **Rs. 5,00,000/- (Rupees Five Lac only) or 11,500 US Dollars (US Dollars Eleven Thousand Five Hundred Only)** as mentioned above separately along with the Bid.

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## **2.12 Bid Bond**

- 2.12.1 Each Bidder shall submit the Bid accompanied by Bid Bond, as per Format 4.9 issued by any of the Banks listed in Format 5.8. In the case of a Consortium, the Lead Member shall furnish the Bid Bond as stipulated in the RFP, on behalf of the Consortium Members as per the Consortium Agreement. The Bid Bond shall be valid for a period of thirty (30) days beyond the validity of the Bid.
- 2.12.2 The Bid Bond, may be invoked by the Authorized Representative or its authorized representative, without any notice, demure, or any other legal process upon occurrence of any of the following:
- In case the Successful Bidder is a Bidding Company choosing to incorporate a Project Company and in case of a Bidding Consortium: “Failure to incorporate the Project Company as a legal entity within fifteen(15) days of issue of Letter of Intent, or
  - Failure to furnish the Contract Performance Guarantee as per Clause 2.13; or
  - Failure to execute the RFP Documents subject to the provisions of Clause 2.2.11; or
  - Bidder submitting any wrong information or making any misrepresentation in Bid as mentioned in Clause 2.5.
- 2.12.3 The Bid Bonds of all Bidders, whose Bids are declared non-responsive, shall be returned and released by the Authorized Representative within thirty (30) days after the date on which the Financial Bids are opened.
- 2.12.4 The Bid Bonds of all unsuccessful Bidders shall be returned and released by the Authorized Representative within a period of thirty (30) days of the occurrence of the earlier of the following:
- a) submission of the Contract Performance Guarantee as per Clause 2.13 of the RFP and the execution of the RFP Documents (as applicable) by the Successful Bidder(s); or
  - b) Expiry of the Bid Validity/extended validity of Bid of unsuccessful Bidders; or
- 2.12.5 The Bid Bonds of all Bidders shall be returned and released by the Authorized Representative within a period of thirty (30) days of the occurrence of the termination/cancellation of Bid process by the Authorised Representative.
- 2.12.6 The Bid Bond of the Successful Bidder(s) shall be returned on the submission of Contract Performance Guarantee as per Clause 2.13 of the RFP and the provisions of the PPA.

## **2.13 Contract Performance Guarantee (CPG)**

- 2.13.1 Within thirty (30) days of issue of Letter of Intent, the Successful Bidder(s) either on his/their own behalf or on behalf of the Seller, shall provide separately to each of the Procurers, the Contract Performance Guarantee calculated on the basis of Rs. 30

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lakhs/MW of the total Contracted Capacity of the Successful Bidder and as prescribed in Format 5.7. The CPG provided to the Procurers shall be allocated in proportion to their respective Contracted Capacity. In case of the Successful Bidder being a Bidding Consortium, the Lead Member shall be responsible for ensuring the submission of the CPG on behalf of all the Consortium Members. The Contract Performance Guarantee shall be initially valid for a period of three (3) months after the Scheduled Delivery Date and thereafter shall be dealt with in accordance with the provisions of the PPA. The Contract Performance Guarantee shall be issued by any of the banks listed in Format 5.8.

- 2.13.2 In case the Successful Bidder is unable to obtain the Contract Performance Guarantee for the total amount from any one bank specified in Format 5.8, the Successful Bidder may obtain the same from not more than three (3) banks specified in Format 5.8.
- 2.13.3 Non submission of the CPG by the Successful Bidder(s) as per the provisions of Clause 2.13 may lead to the invocation of the Bid Bond, cancellation of the Letter of Intent of such Successful Bidder(s) by the Procurer/ Authorized Representative, and thereafter, the provisions of Clause 2.5 (b) shall be applicable.
- 2.13.4 On successful supply of power by the Seller as per the terms of the PPA for a period of five (5) years from the date of commencement of power supply, then subject to the terms and conditions of the PPA, the existing Contract Performance Guarantee shall be reduced by an amount (in Rupees) calculated on the basis of Rs. 15 lakhs per MW of the then existing total Contracted Capacity of the Seller.
- 2.13.5 The Seller shall thereafter provide such reduced Contract Performance Guarantee to the Procurer(s), to replace the existing Contract Performance Guarantee, of an amount calculated on the basis of Rs. 15 lakhs per MW of the then existing total Contracted Capacity of the Seller and allocated in the ratio of then respective Contracted Capacity of the Procurer. Thereafter, the reduced CPG shall be deemed to be the CPG for the remaining term of the PPA.

## **2.14 Opening of Bids**

- 2.14.1 Envelope I (Non-Financial Bid) and Envelope II (Financial Bid) shall be opened as per the following time schedule and at the venue where the Bids are required to be submitted, as specified in Clause 2.8, in the presence of one representative from each of such Bidders who wish to be present:

Opening of Envelope I (Non-Financial Bid): 15:30 hours (IST) on 01.06.09

Opening of Envelope II (Financial Bid): 15:00 hours (IST) on 30.07.09

or such other dates as may be intimated by the Authorized Representative to the Bidders.

In the event of any of above dates falling on a day which is not a working day or which is a public holiday, the Bid shall be opened on the next working day at the same venue and time.

- 2.14.2 The following information from each Bid shall be read out to all the Bidders at the time of opening of Envelope I (Non-Financial Bid) and Envelope II (Financial Bid):

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- Name of the Bidder including Members of the Bidding Consortium, if applicable
- Details of the Bid Bond (applicable only for Envelope I)
- Quantum of power offered and its source (applicable only for Envelope II)
- Details of Injection Point
- Quoted Tariff (applicable only for Envelope II)

## **2.15 Right to withdraw the RFP and to reject any Bid**

2.15.1 This RFP may be withdrawn or cancelled by the Authorized Representative at any time without assigning any reasons thereof. The Authorized Representative further reserves the right, at its complete discretion, to reject any or all of the Bids without assigning any reasons whatsoever and without incurring any liability on any account.

## **2.16 Enquiries**

2.16.1 Written clarifications on the RFP and RFP Documents as per Clause 2.2.6 may be sought from:

Name: Mr. B. K. Makhija  
Designation: Chief Engineer (RPPC)  
Address: Rajasthan Rajya Vidyut Prasaran Nigam Limited  
Vidyut Bhawan, Janpath, Jyoti Nagar  
Jaipur-302005 (Rajasthan)  
**Telefax: +91 – 141 - 2740275**  
**Email: ppmrvpn@sancharnet.in**

2.17 The Authorized Representative reserve the right to interpret the Bid submitted by the Bidder in accordance with the provisions of this RFP and make its own judgment regarding the interpretation of the same. In this regard the Authorized Representative shall have no liability towards any Bidder and no Bidder shall have any recourse to the Authorized Representative with respect to the selection process. The Authorized Representative shall evaluate the Bids using the evaluation process specified in Section 3, at its sole discretion. The Authorized Representative's decision in this regard shall be final and binding on the Bidders.

## **2.18 Confidentiality**

2.18.1 The parties undertake to hold in confidence this RFP and RFP Documents and not to disclose the terms and conditions of the transaction contemplated hereby to third parties, except:

- a) to their professional advisors;
- b) to their officers, contractors, employees, agents or representatives, financiers, who need to have access to such information for the proper performance of their activities;
- c) disclosures required under applicable Law,

without the prior written consent of the other parties of the concerned agreements.

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Provided that the Successful Bidder(s) agrees and acknowledges that any of the Procurers may at any time, disclose the terms and conditions of the RFP and RFP Documents to any person, to the extent stipulated under the applicable Law or the Bidding Guidelines.

## **2.19 Fraudulent and Corrupt Practices**

2.19.1 The Bidders and their respective officers, employees, agents and advisers shall observe the highest standard of ethics during the Bid process and subsequent to the issue of the LOI. Notwithstanding anything to the contrary contained herein, or in the LOI, the Authorized Representative shall reject a Bid, withdraw the LOI, as the case may be, without being liable in any manner whatsoever to the Bidder, if it determines that the Bidder has, directly or indirectly or through an agent, engaged in corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice in the Bid process. In such an event, the Authorized Representative shall forfeit the Bid Bond, without prejudice to any other right or remedy that may be available to the Authorized Representative hereunder or otherwise.

2.19.2 Without prejudice to the rights of the Authorized Representative under Clause 2.19 hereinabove and the rights and remedies which the Authorized Representative may have under the LOI, if a Bidder is found by the Authorized Representative to have directly or indirectly or through an agent, engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice during the Bid process, or after the issue of the LOI, such Bidder shall not be eligible to participate in any tender or RFP issued by the Authorized Representative, during a period of two (2) years from the date such Bidder is found by the Authorized Representative to have directly or indirectly or through an agent, engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practices, as the case may be.

2.19.3 For the purposes of this Clause 2.19, the following terms shall have the meaning hereinafter respectively assigned to them:

(a) **“corrupt practice”** means (i) the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence the actions of any person connected with the Bid process (for avoidance of doubt, offering of employment to or employing or engaging in any manner whatsoever, directly or indirectly, any official of the Authorized Representative who is or has been associated or dealt in any manner, directly or indirectly with the Bid process or the LOI or has dealt with matters concerning the PPA or arising there from, before or after the execution thereof, at any time prior to the expiry of one year from the date such official resigns or retires from or otherwise ceases to be in the service of the Authorized Representative, shall be deemed to constitute influencing the actions of a person connected with the Bid Process); or (ii) engaging in any manner whatsoever, whether during the Bid Process or after the issue of the LOI or after the execution of the PPA, as the case may be, any person in respect of any matter relating to the project or the LOI or the PPA, who at any time has been or is a legal, financial or technical adviser of the Procurer / Authorized Representative in relation to any matter concerning the Project;

(b) **“fraudulent practice”** means a misrepresentation or omission of facts or



suppression of facts or disclosure of incomplete facts, in order to influence the Bid process;

(c) “**coercive practice**” means impairing or harming, or threatening to impair or harm, directly or indirectly, any person or property to influence any person’s participation or action in the Bid process;

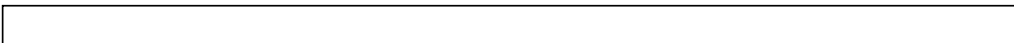
(d) “**undesirable practice**” means (i) establishing contact with any person connected with or employed or engaged by the Procurer/Authorized Representative with the objective of canvassing, lobbying or in any manner influencing or attempting to influence the Bid process; or (ii) having a Conflict of Interest; and

(e) “**restrictive practice**” means forming a cartel or arriving at any understanding or arrangement among Bidders with the objective of restricting or manipulating a full and fair competition in the Bid process;



## SECTION - 3

# EVALUATION CRITERIA



## SECTION 3

### 3 EVALUATION CRITERIA

#### 3.1 Bid Evaluation

The evaluation process comprises the following four steps:

- Step I – Responsiveness check of Non Financial Bid
- Step II – Evaluation of Bidder’s fulfillment of Qualification Requirements as per Clause 2.1
- Step III - Evaluation of Financial Bid
- Step IV – Successful Bidder(s) selection

#### 3.2 STEP I – Responsiveness check of Non Financial Bid

The Non Financial Bid submitted by Bidders shall be scrutinized to establish responsiveness to the requirements laid down in the RFP. Subject to Clause 2.5 (g), any of the following may cause the Bid to be considered “Non-responsive”, at the sole discretion of Authorized Representative:

- Bids that are incomplete, i.e. not accompanied by any of the applicable formats inter alia covering letter, power of attorney supported by a board resolution as per Clause 2.4.1.1, applicable board resolutions, applicable undertakings, format for disclosure, valid Bid Bond, Consortium Agreement;
- Bid not signed by authorized signatory and / or stamped in the manner indicated in this RFP;
- Material inconsistencies in the information / documents submitted by the Bidder, affecting the Qualification Requirements;
- Information not submitted in the formats specified in this RFP;
- A Bidder submitting more than one Bid or participating in more than one Bid as a Member of Bidding Consortium;
- Bid validity being less than that required as per Clause 2.9 of this RFP;
- Bid being conditional in nature;
- Bid not received by the Bid Deadline;
- Bid having Conflict of Interest;
- More than one Member of the Bidding Consortium or a Bidding Company using the credentials of the same Parent Company / Affiliate;
- Bidder delaying in submission of additional information or clarifications sought by Procurer/ Authorized Representative as applicable;
- Bidder makes any misrepresentation as specified in Clause 2.5.

Each Bid shall be checked for compliance with the submission requirements set forth in this RFP before the evaluation of Bidder’s fulfillment of Qualification Requirement is taken up. Format 4.11 shall be used to check whether each Bidder meets the stipulated requirements.

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**3.3 STEP II– Evaluation of Bidder’s fulfillment of Qualification Requirements**

3.3.1 Evaluation of Bidder’s Qualification will be carried out based on the information furnished by the Bidder as per the prescribed Format 4.6 and related documentary evidence in support of meeting the Qualification Requirements as specified in Clause 2.1. Non-availability of information and related documentary evidence for the satisfaction of Qualification Requirements may cause the Bid to be non-responsive.

**3.4 Step III - Evaluation of Financial Bid**

3.4.1 Financial Bids (Envelope II) of the Qualified Bidders shall be opened in presence of the representatives of such Qualified Bidders, who wish to be present, as per the timelines indicated in Clause 2.14, or such other date as may be intimated by Authorized Representative to the Bidders. The evaluation of Financial Bid shall be carried out based on the information furnished in Envelope II (Financial Bid).

Provided however, in case Envelope II of only one Qualified Bidder OR two Qualified Bidders having any affiliate company or companies of the Procurer(s) remain(s) after the responsiveness check (Step I), the Envelope II of such Bidder(s) shall not be opened and the matter shall be referred to Appropriate Commission and the selection of the Successful Bidder shall then be at the sole discretion of the Appropriate Commission.

3.4.2 The Financial Bids submitted by the Bidders shall be scrutinized to ensure conformity with the provisions of Clause 2.4.1.1 (B) of this RFP. Any Bid not meeting any of the requirements as per Clause 2.4.1.1 (B) of this RFP may cause the Bid to be considered “Non-responsive” at the sole decision of the Authorized Representative. Financial Bid not in conformity with the requirement of Sl. No. (iv) and (x) of Clause 2.4.1.1 (B) of this RFP shall be rejected.

3.4.3 The Bidders shall quote the different components of Tariff as specified in Format 4.10. Based on the Quoted Tariff provided by the Bidders, the Levelized Tariff shall be calculated for the term of the PPA as per the methodology mentioned below.

3.4.4 For the purpose of comparison of Financial Bids, the escalable components of Quoted Tariff of each Bidder shall be uniformly escalated as per the relevant inflation / escalation rates mentioned below. For the actual Tariff payment, such factors shall be applied as per the provisions of the PPA.

Head	Value
<b>General</b>	
1. Annual escalation rate applicable to Quoted Escalable Capacity Charge	This shall be the rate notified by CERC applicable on the day which is seven (7) days prior to Bid Deadline
2. Discount Rate for computation of Levelized Tariff	This shall be the rate notified by CERC applicable on the day which is seven (7) days prior to Bid Deadline
3. Annual escalation rate applicable to normative Transmission Charges	This shall be the rate notified by CERC applicable on the day which is seven (7) days prior to Bid Deadline



<b>Captive Coal Block/ Linkage Based Coal</b>	
4. Annual escalation rate applicable to Quoted Escalable Energy Charges (for captive coal block)	This shall be the rate notified by CERC applicable on the day which is seven (7) days prior to Bid Deadline
5. Annual escalation rate applicable to Quoted Escalable Energy Charges (for linkage based coal)	This shall be the rate notified by CERC applicable on the day which is seven (7) days prior to Bid Deadline
6. Annual escalation rate applicable to Quoted Escalable Inland Transportation Charges	This shall be the rate notified by CERC applicable on the day which is seven (7) days prior to Bid Deadline
<b>Imported Coal</b>	
7. Annual escalation rate applicable to Quoted Escalable Energy Charges	This shall be the rate notified by CERC applicable on the day which is seven (7) days prior to Bid Deadline
8. Annual escalation rate applicable to Quoted Escalable Overseas Transportation Charges	This shall be the rate notified by CERC applicable on the day which is seven (7) days prior to Bid Deadline
9. Annual escalation rate applicable to Quoted Escalable Inland Transportation Charges	This shall be the rate notified by CERC applicable on the day which is seven (7) days prior to Bid Deadline
10. Annual escalation rate applicable to Quoted Escalable Fuel Handling Charges	This shall be the rate notified by CERC applicable on the day which is seven (7) days prior to Bid Deadline
11. Base Exchange Rate for Quoted Escalable and Non-Escalable Energy Charge and Escalable and Non-Escalable Overseas Transportation Charge (Rs. / US\$)	This shall be the simple average of fifteen (15) SBI TT buying rate for last fifteen (15) days (for fifteen (15) such days for which exchange rates are published by SBI), seven (7) days before Bid Deadline (excluding Bid Deadline) for which such exchange rates are published by SBI.
12. Rupee appreciation/depreciation rate with respect to US\$ applied to Quoted Non Escalable and Escalable Energy Charges and Escalable and Non-Escalable Overseas Transportation Charge (Rs. / US\$)	This shall be the rate notified by CERC applicable on the day which is seven (7) days prior to Bid Deadline
<b>Imported gas (R-LNG)</b>	
13. Annual escalation rate applicable to Quoted Escalable Energy Charges	This shall be the rate notified by CERC applicable on the day which is seven (7) days prior to Bid Deadline

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14. Annual escalation rate applicable to Quoted Escalable Overseas Transportation Charges	This shall be the rate notified by CERC applicable on the day which is seven (7) days prior to Bid Deadline
15. Annual escalation rate applicable to Quoted Escalable Inland Transportation Charges	This shall be the rate notified by CERC applicable on the day which is seven (7) days prior to Bid Deadline
16. Annual escalation rate applicable to Quoted Escalable Fuel Handling Charges	This shall be the rate notified by CERC applicable on the day which is seven (7) days prior to Bid Deadline
17. Rupee appreciation/depreciation rate with respect to US\$ applied to Quoted Escalable and Non Escalable Energy Charges and Escalable and Non-Escalable Oversea Transportation Charge (Rs. / US\$)	This shall be the rate notified by CERC applicable on the day which is seven (7) days prior to Bid Deadline
<b>Domestic (Pipeline) Gas</b>	
18. Annual escalation rate applicable to Quoted Escalable Energy Charges	This shall be the rate notified by CERC applicable on the day which is seven (7) days prior to Bid Deadline
19. Annual escalation rate applicable to Quoted Escalable Inland Transportation Charges	This shall be the rate notified by CERC applicable on the day which is seven (7) days prior to Bid Deadline

The factor at Sl. No. 1 in the above table shall be applied from the Scheduled Delivery Date and the factors at Sl. No. 3, 4, 5, 6, 7, 8, 9, 10, 12, 13, 14, 15, 16, 17, 18 and 19 shall be applied from the Bid Deadline (as applicable). Further all the factors mentioned in Sl No. 1, 4, 5, 6 15 and 16 shall be applied as at the mid point of each Contract Year.

3.4.5 Applicable transmission charges shall be added to such escalated Quoted Tariff as described below.

#### 3.4.6 Transmission Charges

The Injection Point specified by the Bidder in its Financial Bid shall be used to add the applicable transmission charges.

- a) In case of Injection Point being a CTU Interface, applicable transmission charges as specified in Format 5.10 from such CTU Interface up to the Delivery Point with appropriate escalation shall be added to the escalated Quoted Tariff.
- b) Transmission Charges, if any, for transmitting power from the Interconnection Point to the Injection Point shall be borne by the Seller and no transmission charges for such intrastate transmission link shall neither be added for evaluation nor shall be payable by the Procurer(s) during the term

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of the PPA.

- c) In case of Injection Point being a Delivery Point, no transmission charges shall be added.

### 3.4.7 Transmission Loss

The escalated Quoted Tariffs (Rs./kWh) of each of the Bidders for **each year** of the term of the PPA, calculated as per provisions of Clause 3.4.4 and after adding applicable escalated transmission charges, shall then be adjusted for the applicable transmission losses in the following manner:

Adjusted escalated Quoted Tariff (in Rs/ kWh) = escalated Quoted Tariff (in Rs/ kWh as calculated in Clause 3.4.4 and after adding applicable escalated transmission charges) \* Aggregate Adjustment Factor (AAF):

where,

Aggregate Adjustment Factor (AAF) = (AF)1 \* (AF)2 \* ..... \* (AF)n and

Adjustment Factor (AF) = 1/ (1-applicable transmission loss (in %/100))

The applicable transmission loss (in %) shall comprise of

- a) the transmission loss (in %) for the intrastate transmission link connecting the Interconnection Point to the Injection Point, if applicable and specified by the Bidder in Format 4.10; and
- b) the applicable normative transmission loss (in %) from the Injection Point to the Delivery Point for the regions involved and as provided in Format 5.11 of this RFP

### 3.4.8 Computing Levelized Tariff

The adjusted escalated Quoted Tariffs (Rs./kWh) as calculated in Clause 3.4.7 above for each Bidder for the term of PPA, shall then be discounted upto the Scheduled Delivery Date mentioned in Clause 1.3.1, by applying the discount factors (based on the Discount Rate as mentioned in Clause 3.4.4 above) and such aggregate discounted value for the term of the PPA shall be divided by the sum of such discount factors so as to calculate the Levelized Tariff of each Bidder.

The Levelized Tariff shall be calculated by assuming uniformly for all Bidders that power shall get delivered on the Scheduled Delivery Date.

- 3.4.9 For the ease of submission and clarity of Bidders, the methodology of computation of Levelized Tariff is presented in the Format 5.9 of this RFP. Bidders are required to go through this illustration carefully and seek clarifications if required.

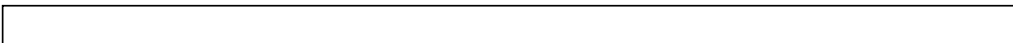


### **3.5 STEP IV – Successful Bidder(s) Selection**

- 3.5.1 Bids qualifying in Step III shall only be evaluated in this stage.
- 3.5.2 The Levelized Tariff calculated as per Clause 3.4.8 for all Financial Bids of Qualified Bidders shall be ranked from the lowest to the highest.
- 3.5.3 The Bidder with the lowest Levelized Tariff shall be declared as the Successful Bidder for the quantum of power (in MW) offered by such Bidder in its Financial Bid.
- 3.5.4 The selection process of the Successful Bidder as mentioned above in Clause 3.5.3 shall be repeated for all the remaining Financial Bids of Qualified Bidders until the entire Requisitioned Capacity is met or until the time when the balance of the Requisitioned Capacity is less than the Minimum Bid Capacity.
- 3.5.5 At any step in the process in Clause 3.5.4, in case the Requisitioned Capacity has not been achieved and the offered capacity of the Bidder with the lowest Levelized Tariff amongst the remaining Financial Bids is larger than the balance Requisitioned Capacity, any fraction or combination of fractions offered by such Bidder shall be considered for selection, towards meeting the Requisitioned Capacity.
- 3.5.6 The selection process shall stand completed once the Requisitioned Capacity has been achieved through the summation of the quantum offered by the Successful Bidders or when the balance of the Requisitioned Capacity is less than the Minimum Bid Capacity.  
  
Provided however in case only one Bidder remains at any step of the selection process and the balance Requisitioned Capacity exceeds the Minimum Bid Capacity, Financial Bid(s) of such Bidder shall be referred to Appropriate Commission and the selection of the Bidder shall then be at the sole discretion of the Appropriate Commission.
- 3.5.7 At any step during the selection of Successful Bidder(s) in accordance with Clauses 3.5.2 to 3.5.6, the Authorized Representative reserves the right to increase / decrease the Requisitioned Capacity by up to twenty percent (20%) of the quantum indicated in Clause 1.3.1 to achieve the balance Requisitioned Capacity and select the Successful Bidder with the lowest Levelized Tariff amongst the remaining Bids. Any increase / decrease in the Requisitioned Capacity exceeding twenty percent (20%) of the quantum in Clause 1.3.1, can be made only with the approval of the Appropriate Commission.
- 3.5.8 The Letter(s) of Intent shall be issued to all such Successful Bidder(s) selected as per the provisions of this Clause 3.5.
- 3.5.9 There shall be no negotiation on the Quoted Tariff between the Authorized Representative and the Bidder(s) during the process of evaluation.
- 3.5.10 Each Successful Bidder shall unconditionally accept the LOI, and record on one (1) copy of the LOI, “Accepted Unconditionally”, under the signature of the authorized signatory of the Successful Bidder and return such copy to the Authorized Representative within seven (7) days of issue of LOI.

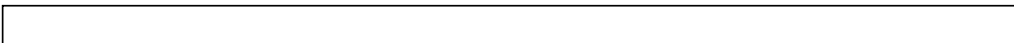
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- 3.5.11 If the Successful Bidder, to whom the Letter of Intent has been issued does not fulfill any of the conditions specified in Clauses 2.2.8 and 2.2.9, the Authorized Representative reserves the right to annul the award of the Letter of Intent of such Successful Bidder. Further, in such a case, the provisions of Clause 2.5 (b) shall apply.
- 3.5.12 The Authorized Representative, in its own discretion, has the right to reject all Bids if the Quoted Tariff are not aligned to the prevailing market prices.



# SECTION - 4

## FORMATS FOR BID SUBMISSION



## SECTION – 4

### 4. FORMATS FOR BID SUBMISSION

The following formats are required to be submitted as part of the Bid. These formats are designed to demonstrate the Bidder's compliance with the Qualification Requirements set forth in Clause 2.1 of Section 2 and other Bid submission requirements specified in the RFP.

- i. Format of Covering Letter (Envelope I) – 4.1
- ii. Formats for Power of Attorney (Envelope I) - 4.2
- iii. Format for the Consortium Agreement (Envelope I) – 4.3
- iv. Format for Letter of Consent from Consortium Members (Envelope I) – 4.4
- v. Format for Bidder's composition and ownership structure (Envelope I) – 4.5
- vi. Format for Qualification Requirement (Envelope I) - 4.6
- vii. Format of Undertakings (Envelope I) – 4.7
- viii. Format for Board Resolutions (Envelope I) – 4.8
- ix. Format for Bid Bond (Envelope I) – 4.9
- x. Format for Financial Bid (Envelope II) – 4.10
- xi. Format of checklist for Bid submission requirements (Envelope I) – 4.11
- xii. Format for Disclosure (Envelope I) – 4.12
- xiii. Details of source of power and representative fuel(Envelope I) – 4.13
- xiv. Format for certificate of relationship of Parent Company or Affiliate with the Bidding Company or with the Member of the Bidding Consortium, including the Lead Member (Envelope I) – 4.14

A Bidder may use additional sheets to submit the information for its detailed response.

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#### 4.1 Format of Covering Letter

(The covering letter should be on the Letter Head of the Bidding Company/ Lead Member of the Bidding Consortium)

Date: \_\_\_\_\_

From : \_\_\_\_\_(Insert name and address of Bidding Company/ Lead Member of the Bidding Consortium)

\_\_\_\_\_

Tel.#: \_\_\_\_\_

Fax#: \_\_\_\_\_

E-mail address# \_\_\_\_\_

To

**Chief Engineer (RPPC)**

**Rajasthan Rajya Vidyut Prasaran Nigam Limited**

**Vidyut Bhawan, Janpath, Jyoti Nagar**

**Jaipur-302005 (Rajasthan)**

Sub: **Bid for supply of power on *long* term basis through tariff based competitive bidding process under Case-1 bidding procedure in response to RFP dated 25.02.09.**

Dear Sir,

We, the undersigned ..... [*insert name of the 'Bidder'*] having read, examined and understood in detail the RFP and RFP Documents for supply of power on long term basis through tariff based competitive bidding process for meeting the requirements of the Procurer(s) hereby submit our Bid comprising of Financial Bid and Non-Financial Bid. We confirm that neither we nor any of our Parent Company/ Affiliate/ Ultimate Parent Company has submitted Bid other than this Bid directly or indirectly in response to the aforesaid RFP.

1. We give our unconditional acceptance to the RFP, dated 25.02.09 and RFP Documents attached thereto, issued by the Procurer/ Authorized Representative, as amended. In token of our acceptance to the RFP Documents, the same have been initialed by us and enclosed to the Bid. We shall ensure that the Seller shall execute such RFP Documents as per the provisions of the RFP and provisions of such RFP Documents shall be binding on us.

#### 2. Bid Bond

We have enclosed a Bid Bond of Rs. .... (Insert Amount), in the form of bank guarantee no.....(Insert number of the bank guarantee) dated ..... [Insert date of bank guarantee] as per Format 4.9 from ..... (Insert name of bank providing Bid Bond) and valid up to.....in terms of Clause 2.12 of this RFP. The offered quantum of power by us is ..... MW (Insert total capacity offered)

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3. We have submitted our Financial Bid strictly as per Format 4.10 of this RFP, without any deviations, conditions and without mentioning any assumptions or notes for the Financial Bid in the said format.

**4. Acceptance**

We hereby unconditionally and irrevocably agree and accept that the decision made by the Procurer/ Authorized Representative in respect of any matter regarding or arising out of the RFP shall be binding on us. We hereby expressly waive any and all claims in respect of Bid process.

We confirm that there are no litigations or disputes against us, which materially affect our ability to fulfill our obligations with regard to supply of power.

**5. Familiarity with Relevant Indian Laws & Regulations**

We confirm that we have studied the provisions of the relevant Indian laws and regulations as required to enable us to submit this Bid and execute the RFP Documents, in the event of our selection as Successful Bidder. We further undertake and agree that all such factors as mentioned in Clause 2.6 of RFP have been fully examined and considered while submitting the Bid.

**6. Contact Person**

Details of the contact person are furnished as under:

Name : .....  
Designation : .....  
Company : .....  
Address : .....  
Phone Nos. : .....  
Fax Nos. : .....  
E-mail address: .....

7. We are enclosing herewith the Non Financial Bid (Envelope I) and Financial Bid (Envelope II) containing duly signed formats, each one duly closed separately, in one (1) original + two (2) copies (duly attested) as desired by you in the RFP for your consideration.

8. It is confirmed that our Bid is consistent with all the requirements of submission as stated in the RFP and subsequent communications from the Authorized Representative.

9. The information submitted in our Bid is complete, strictly as per the requirements stipulated in the RFP and is correct to the best of our knowledge and understanding. We would be solely responsible for any errors or omissions in our Bid.

10. We confirm that all the terms and conditions of our Bid are valid for acceptance for a period of one hundred and twenty (120) days from the Bid Deadline.

11. We confirm that we have not taken any deviation so as to be deemed non-responsive with respect to the provisions stipulated in Clause 2.4.1, of this RFP.

12. We confirm that no order / ruling has been passed by an Appropriate Commission or a competent court against us or any of our Affiliates in the preceding five (5) years from the Bid Deadline for breach of any contract for supply of power having duration of contract in excess of one (1) year and that the bid security submitted by the us or any of our Affiliates has not been forfeited, either partly or wholly, in any bid process under Case-1 or case -2 bidding procedure for procurement of power, in the preceding five (5) years from the Bid Deadline to any licensee in India as per the provisions of Clause 2.1.8.

Dated the \_\_\_\_\_ day of \_\_\_\_\_, 20...

Thanking you,  
We remain,

Yours faithfully,

**Name, Designation and Signature of Authorized Person in whose name Power of Attorney / Board Resolution as per Clause 2.4.1.1 is issued**

--



**4.2 Formats for Power of Attorney**

**POWER OF ATTORNEY**

**(To be on non-judicial stamp paper of appropriate value as per Stamp Act relevant to place of execution. Foreign companies submitting Bids are required to follow the applicable law in their country)**

**a) Power of Attorney to be provided by the Bidding Company/ Lead Member in favor of its representative as evidence of authorized signatory’s authority.**

Know all men by these presents, We .....(name and address of the registered office of the Bidding Company or Lead Member of the Bidding Consortium, as applicable) do hereby constitute, appoint and authorize Mr./Ms.....(name and residential address) who is presently employed with us and holding the position of ..... as our true and lawful attorney, to do in our name and on our behalf, all such acts, deeds and things necessary in connection with or incidental to submission of our Bid for supply of power on long term basis through tariff based competitive bidding process for meeting the requirements of **Jaipur Vidyut Vitran Nigam Limited (JVVNL), Ajmer Vidyut Vitran Nigam Limited (AVVNL) and Jodhpur Vidyut Vitran Nigam Limited (JdVVNL)** in the country of India in response to the RFP dated 25.02.09 issued by **Rajasthan Rajya Vidyut Prasaran Nigam Limited** “Authorized Representative”, including signing and submission of the Bid and all other documents related to the Bid, including but not limited to undertakings, letters, certificates, acceptances, clarifications, guarantees or any other document which the Authorized Representative may require us to submit. The aforesaid Attorney is further authorized for making representations to the Authorized Representative, and providing information / responses to the Authorized Representative, representing us in all matters before the Authorized Representative, and generally dealing with the Authorized Representative in all matters in connection with our Bid till the completion of the bidding process as per the terms of the RFP.

We hereby agree to ratify all acts, deeds and things done by our said attorney pursuant to this Power of Attorney and that all acts, deeds and things done by our aforesaid attorney shall be binding on us and shall always be deemed to have been done by us.

All the terms used herein but not defined shall have the meaning ascribed to such terms under the RFP.

**Signed by the within named**  
.....[Insert the name of the executant company]

**through the hand of**  
Mr. ....  
**duly authorized by the Board to issue such Power of Attorney**

**Dated this ..... day of .....**

**Accepted**

.....  
Signature of Attorney  
(Name, designation and address of the Attorney)

**Attested**

.....  
(Signature of the executant)  
(Name, designation and address of the executant)

.....  
**Signature and stamp of Notary of the place of execution**

**Common seal of ..... has been affixed in my/our presence pursuant to Board of Director's Resolution dated.....**

**WITNESS**

1. ....  
(Signature)  
  
Name .....  
  
Designation.....

2. ....  
(Signature)  
  
Name .....  
  
Designation.....

**Notes:**

- (1) The mode of execution of the power of attorney should be in accordance with the procedure, if any, laid down by the applicable law and the charter documents of the executant(s) and the same should be under common seal of the executant affixed in accordance with the applicable procedure. Further, the person whose signatures are to be provided on the power of attorney shall be duly authorized by the executant(s) in this regard.
- (2) The person authorized under this Power of Attorney, in the case of the Bidding Company/Lead Member being a public company, or a private company which is a subsidiary of a public company, in terms of the Companies Act, 1956, with a paid up share capital of more than Rupees five crores, should be the Managing Director/ whole time director/manager appointed under section 269 of the Companies Act, 1956. In all

--

other cases the person authorized should be a director duly authorized by a board resolution duly passed by the company.

In case of the Bidding Company/Lead Member being a foreign company, the same shall be signed by a person of equivalent position

- (3) In the event, power of attorney has been executed outside India, the same needs to be duly notarized by a notary public of the jurisdiction where it is executed.
- (4) Also, wherever required, the executant(s) should submit for verification the extract of the chartered documents and documents such as a Board resolution / power of attorney, in favour of the person executing this power of attorney for delegation of power hereunder on behalf of the executant(s).

--

**b) Power of Attorney to be provided by each of the Members of the Consortium (other than the Lead Member) in favor of the Lead Member**

**WHEREAS Rajasthan Rajya Vidyut Prasaran Nigam Limited** “*Authorized Representative*” have issued Request For Proposal (RFP) on 25.02.09 for inviting Bids in respect of supply of power to the Procurer(s) named in the RFP on the terms and contained in the RFP and the RFP Documents (as defined in RFP);

**AND WHEREAS** ....., ..... and ..... (Insert names of all Members of Consortium) the Members of the Consortium are desirous of submitting a Bid in response to the RFP, and if selected, undertaking the responsibility of supplying the contracted capacity of power to the Procurer(s) as per the terms of the RFP Documents;

**AND WHEREAS** all the Members of the Consortium have agreed under the Consortium Agreement dated ..... entered into between all the Members and submitted along with the Bid to appoint ..... (Insert the name and address of the Lead Member) as Lead Member to represent all the Members of the Consortium for all matters regarding the RFP and the RFP documents and the Bid;

**AND WHEREAS** pursuant to the terms of the RFP and the Consortium Agreement, we, the Members of the Consortium hereby designate M/s ..... (Insert name of the Lead Member) as the Lead Member to represent us in all matters regarding the Bid and the RFP, in the manner stated below:-

Know all men by these presents, We ..... (Insert name and address of the registered office of the Member-1), ..... (Insert name and address of the registered office of the Member-2) ..... (Insert name and address of the registered office of the Member-n) do hereby constitute, appoint and authorise .....(name and registered office address of the Lead Member), which is one of the Members of the Consortium, to act as the Lead Member and our true and lawful attorney, to do in our name and on our behalf, all such acts, deeds and things necessary in connection with or incidental to submission of Consortium’s Bid in response to the Request For Proposal dated 25.02.09 issued by the Authorized Representative including signing and submission of the Bid and all documents related to the Bid as specified in the RFP, including but not limited to undertakings, letters, certificates, acceptances, clarifications, guarantees or any other document, which the Procurer/Authorized Representative may require us to submit. The aforesaid Attorney shall be further authorized for making representations to the *Authorized Representative* named in the RFP, and providing information / responses to the *Authorized Representative* named in the RFP, representing us and the Consortium in all matters before the *Authorized Representative* named in the RFP, and generally dealing with the *Authorized Representative* named in the RFP in all matters in connection with our Bid, till completion of the bidding process in accordance with the RFP.

We, as Members of the Consortium, hereby agree to ratify all acts, deeds and things done by our said attorney pursuant to this Power of Attorney and that all acts, deeds and things done by our aforesaid attorney shall be binding on us and shall always be deemed to have been done by us.

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All the terms used herein but not defined shall have the meaning ascribed to such terms under the RFP.

**Signed by the within named**  
.....[Insert the name of the executant company]  
**through the hand of**  
Mr. ....  
**duly authorized by the Board to issue such Power of Attorney**

**Dated this** ..... **day of** .....

**Accepted**

.....  
**Signature of Attorney**  
(Name, designation and address of the Attorney)

**Attested**

.....  
(Signature of the executant)  
(Name, designation and address of the executant)

.....  
**Signature and stamp of Notary of the place of execution**

**Common seal of** ..... **has been affixed in my/our presence pursuant to Board of Director's Resolution dated**.....

**WITNESS:**

1. ....  
(Signature)  
  
Name .....

Designation.....

2. ....  
(Signature)  
  
Name .....

Designation.....

--

Notes:

- (1) The mode of execution of the power of attorney should be in accordance with the procedure, if any, laid down by the applicable law and the charter documents of the executant(s) and the same should be under common seal of the executant affixed in accordance with the applicable procedure. Further, the person whose signatures are to be provided on the power of attorney shall be duly authorized by the executant(s) in this regard.
- (2) The person authorized under this Power of Attorney, in the case of the Member being a public company, or a private company which is a subsidiary of a public company, in terms of the Companies Act, 1956, with a paid up share capital of more than Rupees five crores, should be the Managing Director/ whole time director/manager appointed under section 269 of the Companies Act, 1956. In all other cases the person authorized should be a director duly authorized by a board resolution duly passed by the company.

In case of the Bidding Company/Lead Member being a foreign company, the same shall be signed by a person of equivalent position

- (3) In the event, power of attorney has been executed outside India, the same needs to be duly notarized by a notary public of the jurisdiction where it is executed.
- (4) Also, wherever required, the executant(s) should submit for verification the extract of the chartered documents and documents such as a Board resolution / power of attorney, in favour of the person executing this power of attorney for delegation of power hereunder on behalf of the executant(s).

--

**4.3 Format for the Consortium Agreement**

(To be on non-judicial stamp paper of appropriate value as per Stamp Act relevant to place of execution, duly signed on each page. Foreign entities submitting Bid are required to follow the applicable law in their country)

**FORM OF CONSORTIUM AGREEMENT BETWEEN**  
M/S....., M/S.....,  
M/S..... AND M/S.....  
FOR (.....)  
AS PER CLAUSE 2.2.4

**THIS Consortium Agreement** (hereinafter referred to as “Agreement”) executed on this..... day of .....Two thousand..... between M/s..... a company incorporated under the laws of ..... and having its Registered Office at ..... (hereinafter called the "**Party 1**", which expression shall include its successors, executors and permitted assigns), M/s ..... a company incorporated under the laws of ..... and having its Registered Office at ..... (hereinafter called the "**Party 2**", which expression shall include its successors, executors and permitted assigns) and M/s..... a Company incorporated under the laws of ..... and having its Registered Office at ..... (hereinafter called the "**Party n**", which expression shall include its successors, executors and permitted assigns) (The Bidding Consortium should list the name, address of its registered office and other details of all the Consortium Members) for the purpose of submitting the Bid in response to the RFP and in the event of selection as Successful Bidder to comply with the requirements as specified in the RFP and ensure execution of the RFP Documents as may be required to be entered into with the **Jaipur Vidyut Vitran Nigam Limited (JVVNL), Ajmer Vidyut Vitran Nigam Limited (AVVNL) and Jodhpur Vidyut Vitran Nigam Limited (JdVVNL)**.

Party 1, Party 2, and Party n are hereinafter collectively referred to as the “Parties” and individually as a “Party”.

**WHEREAS** the Rajasthan Rajya Vidyut Prasaran Nigam Limited the “Authorized Representative” desired to procure power on long term basis through tariff based competitive bidding process.

**WHEREAS**, the *Authorized Representative* had invited Bids, vide RFP dated 25.02.09 issued to..... *[Insert the name of purchaser of RFP]*

**AND WHEREAS** Clause 2.2.4 of the RFP stipulates that the Bidders qualifying on the strength of a Bidding Consortium shall submit a legally enforceable Consortium Agreement in a format specified in the RFP, whereby the Consortium Members undertake to be liable for their respective equity investment commitment for the formation of a Project Company and undertake to submit the Contract Performance Guarantee as required as per the provisions of the RFP, as specified herein.

**NOW THEREFORE, THIS INDENTURE WITNESSTH AS UNDER:**

In consideration of the above premises and agreement all the parties in this Consortium do hereby mutually agree as follows:

1. In consideration of the selection of the Consortium as the Successful Bidder by the Authorized Representative, we the Members of the Consortium and Parties to the Consortium Agreement do hereby unequivocally agree that M/s..... (Insert name of the Lead Member), shall act as the Lead Member as defined in the RFP for self and agent for and on behalf of ..... (the names of all the other Members of the Consortium to be filled in here).
2. The Lead Member is hereby authorized by the Members of Consortium and Parties to the Consortium Agreement to bind the Consortium and receive instructions for and on behalf of all Members.
3. The Lead Member shall be liable and responsible for ensuring the individual and collective commitment of each of the Members of the Consortium in discharging all their respective equity obligations. Each Consortium Member further undertakes to be individually liable for the performance of its part of the obligations without in any way limiting the scope of collective liability envisaged in this Agreement.
4. (Insert as applicable) The Consortium shall be responsible to incorporate a Project Company as a legal entity as per the provisions of the RFP, within fifteen (15) days of issue of LOI provided such a Project Company has not been incorporated by the Bidder prior to the submission of the Bid.

**OR**

The Consortium has incorporated a Project Company by the name .....(Insert name of the Project Company) to undertake the responsibilities and obligations for supply of power as per the provisions of the RFP Documents.

The percentage of equity holding of each Member of the Consortium in the Project Company shall be/is as follows:

Name	Percentage of equity holding in the Project Company
Party 1	....
....	....
Party n	....
<b>Total</b>	<b>100%</b>

***[Note: The percentage equity holding for any Consortium Member cannot be zero in the above table. Lead Member’s percentage equity holding cannot be less than 51% from the Effective Date up to a period of two (2) years after commencement of supply of power and twenty-six (26%) for a period of three (3) years thereafter.]***



5. In case of any breach of any of the equity investment commitment as specified under clause 4 above by any of the Consortium Members for the formation of the Project Company, the Lead Member shall be liable to meet the equity obligation.
6. Except as specified in the Agreement, it is agreed that sharing of responsibilities as aforesaid and equity investment obligations thereto shall not in any way be a limitation of responsibility of the Lead Member under these presents.
7. It is further specifically agreed that the financial liability for equity contribution of Lead Member shall, not be limited in any way so as to restrict or limit its liabilities. The Lead Member shall be liable irrespective of their scope of work or financial commitments.
8. This Consortium Agreement shall be construed and interpreted in accordance with the Laws of India and courts at Jaipur (Rajasthan) alone shall have the exclusive jurisdiction in all matters relating thereto and arising there under.
9. It is hereby agreed that the Lead Member shall furnish the Bid Bond, as stipulated in the RFP, on behalf of the Consortium.
10. It is hereby agreed that in case of selection of Bidding Consortium as the Successful Bidder, the Parties to this Consortium Agreement do hereby agree that they shall furnish the Contract Performance Guarantee on behalf of the Seller in favor of the Procurer(s), as stipulated in the RFP and PPA. The Lead Member shall be responsible for ensuring the submission of the CPG on behalf of all the Consortium Members.
11. It is further expressly agreed that the Consortium Agreement shall be irrevocable and, for the Successful Bidder, shall remain valid over the term of the PPA, unless expressly agreed to the contrary by the Procurer(s).
12. The Lead Member is authorized and shall be fully responsible for the accuracy and veracity of the representations and information submitted by the Consortium Members respectively from time to time in response to the RFP for the purposes of the Bid.
13. It is expressly understood and agreed between the Members that the responsibilities and obligations of each of the Members shall be as delineated as annexed hereto as Annexure-I forming integral part of this Agreement. It is further agreed by the Members that the above sharing of responsibilities and obligations shall not in any way be a limitation of joint and several responsibilities and liabilities of the Members, with regards to all matters relating to the supply of power envisaged in the RFP Documents.
14. It is clearly agreed that the Lead Member shall ensure performance under the agreements and if one or more Consortium Members fail to perform its /their respective obligations under the agreement(s), the same shall be deemed to be a default by all the Consortium Members.
15. It is hereby expressly agreed between the Parties to this Consortium Agreement that neither Party shall assign or delegate its rights, duties or obligations under this Agreement except with prior written consent of the Procurer(s).

This Consortium Agreement

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- (a) has been duly executed and delivered on behalf of each Party hereto and constitutes the legal, valid, binding and enforceable obligation of each such Party,
- (b) sets forth the entire understanding of the Parties hereto with respect to the subject matter hereof;
- (c) may not be amended or modified except in writing signed by each of the Parties and with prior written consent of Procurer(s):

**IN WITNESS WHEREOF**, the Parties to the Consortium Agreement have, through their authorized representatives, executed these presents and affixed common seals of their respective companies on the Day, Month and Year first mentioned above.

Common Seal of .....  
 has been affixed in my/our  
 presence pursuant to the  
 Board of Director's resolution  
 dated .....

For and on behalf of  
 Consortium Member (party 1)  
 M/s.....

.....  
 (Signature)

.....  
 (Signature of authorized  
 representative)

Name: .....  
 Designation:.....

Name: .....  
 Designation: .....  
 Place: .....  
 Date: .....

**Witness<sup>3</sup>:**

1.  
 .....  
 (Signature)  
 Name .....  
 Designation.....

2.  
 .....  
 (Signature)  
 Name .....  
 Designation.....

Common Seal of .....  
 has been affixed in my/our  
 presence pursuant to the  
 Board of Director's

For and on behalf of  
 Consortium Member (Party n)  
 M/s.....

<sup>3</sup> Separate witness for each Consortium Member should fill in the details.

resolution dated .....

.....  
(Signature)

Name:  
Designation:

.....  
(Signature of authorized  
representative)

Name:  
Designation:  
Place:  
Date:

**WITNESS <sup>1</sup>**

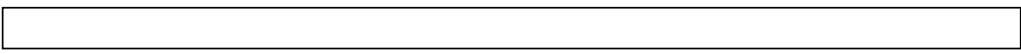
1. ....  
(Signature)  
Name .....  
Designation.....

2. ....  
(Signature)  
Name .....  
Designation.....

**Attested:**

.....  
(Signature)  
(Notary Public)

Place: .....  
Date: .....



**4.4 Format for Letter of Consent from Consortium Members**

**(On the letter head of each Member of the Consortium including Lead Member)**

**Date:** \_\_\_\_\_

**From :** \_\_\_\_\_

\_\_\_\_\_

**Tel.#:**

**Fax#:**

**E-mail address#:**

**To,**

**Chief Engineer (RPPC)**

**Rajasthan Rajya Vidyut Prasaran Nigam Limited**

**Vidyut Bhawan, Janpath, Jyoti Nagar**

**Jaipur-302005 (Rajasthan)**

**Sub: Request for Proposal, dated .... [Insert Date] for long term procurement of power under Case – 1 bidding procedure through tariff based competitive bidding.**

We, the undersigned Member of ..... (Insert name of the Bidding Consortium) have read, examined and understood the RFP and RFP Documents for the selection of Bidder(s) as prospective Seller(s) of power through tariff based competitive bidding (as per Guidelines for Determination of Tariff by Bidding Process for Procurement of Power by Distribution Licensees) for meeting the base load requirements for supply to **Jaipur Vidyut Vitran Nigam Limited (JVVNL), Ajmer Vidyut Vitran Nigam Limited (AVVNL) and Jodhpur Vidyut Vitran Nigam Limited (JdVVNL)**. We hereby confirm our concurrence with the RFP including in particular the Consortium Agreement and the Bid submitted by ..... (Insert name of the Lead Member) in response to the RFP. We confirm that the Bid has been reviewed and each element of the Bid is agreed to including but not limited to the investment commitment in the Project Company.

The details of contact person are furnished as under:

Name : .....  
Designation : .....  
Name of the Company : .....  
Address : .....  
Phone Nos. : .....  
Fax Nos. : .....  
E-mail address : .....

Dated the ..... day of ..... of 20...

Thanking you,  
Yours faithfully,

.....



(Signature, Name, Designation of Authorized Signatory of Consortium Member and Company's Seal)

Business Address:

Name and address of principal officer.

**4.5 Format for Bidder's composition and ownership structure**

**If the Bidder is a Consortium, please provide this information for each Member including Lead Member.**

• **Corporate Details:**

Please provide the following information for the Bidder.

a. Company's Name, Address, Nationality and Director's details:

Name: \_\_\_\_\_

Registered/Principal Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Website Address: \_\_\_\_\_

Corporate Identification Number, if any: \_\_\_\_\_

Country of Origin: \_\_\_\_\_

Address for Correspondence: .....  
.....  
.....

b. Year of Incorporation: \_\_\_\_\_

c. Company's Business Activities:

d. Name of the authorized representative:

e. Telephone Number: \_\_\_\_\_

f. Email Address: \_\_\_\_\_

g. Telefax Number: \_\_\_\_\_

h. Status as a Bidder:  
(i) Bidding Company  
(ii) Lead Member of the Bidding Consortium  
(iii) Member of the Bidding Consortium

Note: (tick the applicable serial number)

i. Company's Local Address in India (if incorporated outside India):  
\_\_\_\_\_  
\_\_\_\_\_

--

j. Please provide the following documents:

- (i) Copy of the Memorandum and Articles of Association and certificate of incorporation or other equivalent organizational document (as applicable in the case of a foreign company), including their amendments, certified by the company secretary of the Bidding Company/each Member of the Consortium (as Attachment 1)
- (ii) Authority letter in favor of **Rajasthan Rajya Vidyut Prasaran Nigam Limited** the “Authorized Representative” from the Bidding Company/each Member of the Consortium (as per format specified below) authorizing the Authorized Representative to seek reference from their respective bankers, lenders, financing institutions and any other person as given below in the Format for Authorization, as per Clause 2.1.7 of the RFP.

k. (Insert this point in case of Bidder being a Bidding Company) Whether the Bidder wishes to form a Project Company for the supply of power? ..... (Yes/No)

l. (Insert this point in case of Bidder being a Bidding Company) Whether the Bidder has already formed a Project Company:.....(Yes/No)

If Yes, the details of the Project Company as follows:

- i) Name of the Project Company .....
- ii) Name of the Equity Holder .....
- iii) Type and No. of Shares owned .....
- iv) % of equity holding .....
- v) Extent of voting control(%) .....
- vi) Date of incorporation .....

• **Details of Ownership Structure:**

Details of persons owning 10% or more of the total paid up equity of the Bidding Company / each Member of the Consortium.

Name of the Bidding Company/ Member of the Consortium: .....

Status of equity holding as on .....

Name of Equity Holder	Type and Number of Shares owned	% of Equity Holding	Extent of Voting Control (%)
1.			
2.			
3.			
4.			
5.			
....			

**Notes:**

1. Status of equity holding should be provided not earlier than 30 (thirty) days prior to Bid Deadline.
2. The above table is to be filled in separately for each Consortium Member if applicable.

- **Documents submitted in support of establishing the relationship with the Parent Company / Affiliate with the Bidding Company or with the Member of the Bidding Consortium (including Lead Member) in terms of the provisions of Clause 2.1.5 of this RFP:**

1. ....
2. ....
3. ....
4. ....

**For and on behalf of Bidding Company/ Member of the Consortium**

M/s.....

.....  
(Signature of authorized representative  
Name:.....  
Designation:.....  
Stamp:.....

Date:.....

Place: .....



**FORMAT FOR AUTHORISATION**

(On Non – judicial stamp paper duly attested by Notary Public)

**(In case of Bidding Consortium to be given separately by each Member)**

The undersigned hereby authorize(s) and request(s) all our Bankers, a list of which is attached herewith as Annexure A hereto, including its subsidiaries and branches, any person, firm, corporation or authority to furnish pertinent information deemed necessary and requested by **Rajasthan Rajya Vidyut Prasaran Nigam Limited** “Authorized Representative” to verify the authenticity of the documents / information submitted by us for meeting the Qualification Requirements in respect of our Bid for procurement of power on long term basis through tariff based competitive bidding process for meeting the requirements of **Jaipur Vidyut Vitran Nigam Limited (JVVNL)**, **Ajmer Vidyut Vitran Nigam Limited (AVVNL)** and **Jodhpur Vidyut Vitran Nigam Limited (JdVVNL)** and / or regarding our financial standing and general reputation.

For and on behalf of M/s..... (Insert Name of Bidding Company or Member of the Consortium)

.....  
Signature and Name of the authorized representative of the Company

Company rubber stamp/seal

.....  
(Signature of Notary Public)

(Name and Address of the Attorney)

Place:.....

Date:.....

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**Annexure A**  
**List of Bankers**

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**4.6 A : FORMAT FOR QUALIFICATION REQUIREMENT (AS PER CLAUSE 2.1.2.1)**

To,  
Chief Engineer (RPPC)  
Rajasthan Rajya Vidyut Prasaran Nigam Limited  
Vidyut Bhawan, Janpath, Jyoti Nagar  
Jaipur-302005 (Rajasthan)

Dear Sir,

**Sub: Bid for procurement of power on *long* term basis through tariff based competitive bidding process in response to the RFP dated 25.02.09.**

We submit our Bid / Bids for the total capacity of ..... MW [Insert total offered capacity in MW; for multiple Financial Bids, mention sum total of offered capacity across all Financial Bids] for which we submit details of our Qualification Requirements.

Financial Bid	Offered Capacity in MW
1	..... MW
2	.....MW
...	
<b>Total of all Financial Bids</b>	<b>.....MW</b>

**[Note: Applicable in case of Bidding Company]**

We certify that the Financially Evaluated Entity (ies) had a Networth of Rs. ....  
Crore or equivalent USD\* computed as per instructions provided in Clause 2.1.2 of this RFP based on unconsolidated audited annual accounts (refer Note-2 below) of any of the last three (3) financial years immediately preceding the Bid Deadline.

Name of Financially Evaluated Entity**	Relationship with Bidding Company***	Networth (Rs. Crore)#	Financial Year
1			
2			
3			
....			
<b>Total Networth</b>			

--

- \* Equivalent USD shall be calculated as per provisions of Clause 2.1.2
- \*\* The Financially Evaluated Entity may be the Bidding Company itself
- \*\*\* The column for “Relationship with Bidding Company” is to be filled in only in case financial capability of Parent Company and/ or Affiliate has been used for meeting Qualification Requirements.
- # In case of more than one Financial Bid submitted by the Bidder, the Networth shall be computed and evaluated on the basis of the sum total of the capacities offered by the Bidder in its Financial Bids.

**[Note: Applicable in case of Bidding Consortium]**

We certify that the Financially Evaluated Entity (ies) had a Networth of Rs. .... Crore or equivalent USD\* computed as per instructions provided in Clause 2.1.2 of the RFP and based on unconsolidated audited annual accounts (refer Note-2 below) of any of the last three (3) financial years immediately preceding the Bid Deadline.

Name of Consortium Member	Equity commitment in the Project Company (%)	Networth of Member (Rs.Crore) (As per table below)	Networth Requirement to be met by the Member in proportion to the equity commitment (Rs.Crore) (Total Networth requirement * % at Column no. 2 )	Whether the Member meets the Networth Requirement
(1)	(2)	(3)	(4)	(5)
1				Yes/No
2				Yes/No
..				Yes/No
<b>Total Networth</b>				

**Note:** The total Networth requirement will be calculated based on the offered capacity in MW x Rs. 0.5 crores

**Member – I (Lead Member)**

**(Note: Similar particulars for each Member of the Consortium is to be furnished, duly certified by the Member’s Statutory Auditors)**

- i. Name of Member:
- ii. Total Networth requirement: Rs \_\_\_\_\_crores
- iii. Percentage of equity commitment for the Project Company by the Member \_\_\_%
- iv. Networth requirement for the Member\*\*\*: Rs. \_\_\_\_\_crores.

Name of Financially Evaluated Entity**	Relationship with Members of Bidding Consortium ***	Networth (Rs. Crore) ****	Financial Year
1			
2			
3			
....			
<b>Total Networkth</b>			

\* Equivalent USD shall be calculated as per provisions of Clause 2.1.2

\*\* The Financially Evaluated Entity may be a Member of the Bidding Consortium itself

\*\*\* The column for “Relationship with Bidding Consortium” is to be filled in only in case financial capability of Parent Company and/ or Affiliate has been used for meeting Qualification Requirements.

\*\*\*\* Networth requirement to be met by a Member shall be in proportion to the equity commitment of the Member for the Project Company and in case of more than one Financial Bid submitted by the Bidding Consortium, the Networth shall be computed and evaluated on the basis of the sum total of the capacities offered by the Bidder in its Financial Bids.

**Yours faithfully**

*(Signature and stamp (on each page) of Managing Director /Chief Executive Officer /Manager [refer Notes 3 and 4 below] of Bidding Company/ Member of Consortium)*

**Name:**

**Date:**

**Place:**

*(Signature and Stamp (on each page) of Statutory Auditors of Bidding Company/ Member of Consortium)*

**Name:**

**Date:**

**Place:**

Please also affix common seal of Bidding Company/ Member in a Bidding Consortium

Common Seal of .....  
has been affixed in my/our  
presence pursuant to the

--

Board of Director's  
resolution dated .....

.....  
(Signature)  
Name:  
Designation:

**WITNESS:**

1. ....  
(Signature)

Name .....

Designation.....

Date:

2. ....  
(Signature)

Name .....

Designation.....

Date:

**Notes:**

1. Along with the above format, in a separate sheet, please provide details of computation of Networth duly certified by Statutory Auditor.
2. Audited consolidated annual accounts of the Bidder may also be used for the purpose of financial criteria provided the Bidder has at least 26% equity in each company whose accounts are merged in the audited consolidated accounts and provided further that the financial capability of such companies (of which accounts are being merged in the consolidated accounts) shall not be considered again for the purpose of evaluation of the Bid.
3. Managing Director/ Chief Executive Officer, being a full time director on the Board of the Bidding Company/ Member in case of a Consortium.
4. In case of Manager, the Company should confirm through a copy of Board Resolution attested by Company Secretary that the concerned person is appointed as Manager as appointed under Section 269 of the Companies Act, for the purpose in question. The Company Secretary shall also certify that the Company does not have a Managing Director or Chief Executive Officer. In case of the Bidding Company/Member being a foreign company, the same shall be signed by a person of equivalent position.

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**B FORMAT FOR QUALIFICATION REQUIREMENT (AS PER CLAUSE 2.1.2.2)**

(This format should be on the Letter Head of the Bidding Company/ Lead Member of the Bidding Consortium)

To,  
Chief Engineer (RPPC)  
Rajasthan Rajya Vidyut Prasaran Nigam Limited  
Vidyut Bhawan, Janpath, Jyoti Nagar  
Jaipur-302005 (Rajasthan)

Dear Sir,

**Sub: Bid for procurement of power on *long term* basis through tariff based competitive bidding process in response to the RFP dated 25.02.09.**

We hereby submit following details/documents in support of meeting the Qualification Requirements prescribed in Clause 2.1.2.2. [In Case the Bidder is a Trading Licensee, the Bidder shall ensure that the entity developing the power station has obtained the Consents, Clearances and Permits and the Bidder shall submit documentary evidence regarding the same in its Bid.]

- 1      **Land:** Area of land acquired and taken possession: ..... [Insert the area of land acquired]  
We declare that the aforesaid area is at least 50% of the total area of the land as indicated in the application filed with the competent authority for seeking environmental clearance.  
“(In case of land to be acquired under the Land Acquisition Act 1894): Copy of notification issued for such land under Section 4 of the Land Acquisition Act, 1894 is enclosed.”  
(In all other cases for purchase of land) Documentary evidence (sale deed or any other equivalent documents) to establish the ownership of such land is enclosed.

- 2      **Fuel:**
- Domestic coal: Name of the allocated mine (in case of mine allocation):  
Proven reserves of the mine (in case of mine allocation):  
Quantity of coal required for the power station at Normative Availability on an annual basis and supporting computation for the same:  
Particulars of documents enclosed in support of the above:
  - Imported coal :Name of the mine acquired or owned and country:  
Proven reserves of the mine (in case of mine allocation):  
At least fifty percent (50%) of the quantity of coal required for the power station at Normative Availability on an annual basis and supporting computation for the same:  
OR

--

Copy of the long term fuel supply agreement (s) for at least fifty percent (50%) of the total the quantity of coal required for the power station at Normative Availability on an annual basis:

Particulars of documents enclosed in support of the above:

- Domestic (piped) Gas: Quantity of gas required for the power station at Normative Availability on an annual basis and supporting computation for the same. Copy of the long term fuel supply agreement (s) for the quantity of gas required for the power station at Normative Availability on an annual basis. (Enclose copy attested by the authorized signatory of the Bid)
  
- RLNG (Imported gas): At least fifty percent (50%) of the quantity of gas required for the power station at Normative Availability on an annual basis and supporting computation for the same  
Copy of the long term fuel supply agreement (s) for the quantity of gas required for the power station at Normative Availability on an annual basis. (Enclose copy attested by the authorized signatory of the Bid)
  
- 3 Water: Approval from the concerned state irrigation department or any other relevant authority for the quantity of water required for the power station. (Enclose copy attested by the authorized signatory of the Bid)
  
- 4 Environmental Clearance: (Enclose copy attested by the authorized signatory of the Bid) Copy of the proposal for environmental clearance submitted to the concerned administrative authority responsible for according final approval in the central/state govt. as the case may be.
  
- 5 Forest Clearance: (Enclose copy attested by the authorized signatory of the Bid ) Copy of the proposal for forest clearance (only in case where forest land to be acquired for power station) submitted to the concerned administrative authority responsible for according final approval in the central/state govt. as the case may be.
  
- 6 In case of existing power station: Documentary evidence regarding commissioning of the power station and available surplus capacity equivalent to the capacity offered in our Bid.

**(Insert in case of Bidder being a Trading Licensee:** (Enclose copy attested by the authorized signatory of the Bid): Copy of the exclusive power purchase agreement executed by the Trading Licensee with the supplier of power.)

**Yours faithfully**

--



*(Signature and stamp (on each page) of Managing Director /Chief Executive Officer /Manager [refer Notes 1 and 2 below] of Bidding Company/ Member of Consortium)*

**Name:**

**Date:**

**Place:**

Please also affix common seal of Bidding Company/ Member in a Bidding Consortium

Common Seal of .....  
has been affixed in my/our  
presence pursuant to the  
Board of Director's  
resolution dated .....

.....

(Signature)

Name:

Designation:

**WITNESS:**

1. ....  
(Signature)

Name .....

Designation.....

Date:

2. ....  
(Signature)

Name .....

Designation.....

Date:

**Notes:**

1. Managing Director/ Chief Executive Officer, being a full time director on the Board of the Bidding Company/ Member in case of a Consortium.

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2. In case of Manager, the Company should confirm through a copy of Board Resolution attested by Company Secretary that the concerned person is appointed as Manager as appointed under Section 269 of the Companies Act, for the purpose in question. The Company Secretary shall also certify that the Company does not have a Managing Director or Chief Executive Officer. In case of the Bidding Company/Member being a foreign company, the same shall be signed by a person of equivalent position

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#### 4.7 Format of Undertaking

##### (A) Bidder's Undertaking

[On the Letter Head of the Bidding Company/Lead Member of Bidding Consortium]

To,

**Chief Engineer (RPPC)  
Rajasthan Rajya Vidyut Prasaran Nigam Limited  
Vidyut Bhawan, Janpath, Jyoti Nagar  
Jaipur-302005 (Rajasthan)**

Dear Sir,

**Sub: Bidders' Undertakings for Bid for supply of power to Procurer(s) in response to the RFP dated 25.02.09**

1. We give our unconditional acceptance to the RFP and RFP Documents issued by Procurer/Authorized Representative as a part of the RFP dated 25.02.09, and as amended. We shall ensure that the Seller shall execute such RFP Documents as per the provisions of the RFP.
2. We have submitted our Financial Bid(s) strictly as per Format 4.10 of the RFP, without any deviations, conditions and without mentioning any assumptions or notes for the Financial Bid in the said format.
3. We have submitted the Bid on the terms and conditions contained in the RFP.
4. Our Bid (including Financial Bid) is valid up to the period required under Clause 2.9 of the RFP.
5. Our Bid (including Financial Bid) has been duly signed by authorised signatory and closed in the manner and to the extent indicated in the RFP and the Power of Attorney/ Board Resolution as per Clause 2.4.1.1 in requisite format as per RFP has been enclosed in original with this undertaking.
6. *(Insert in case the Bidder is not a Trading Licensee)* "We undertake that we shall not submit any bid, on the basis of the same generation source and quantum of power from such source as mentioned in our Bid, in any other bid process till the time of selection of Successful Bidder and issue of LOI or the termination of the process, which ever is earlier, subject to a maximum of period of one hundred and twenty (120) days from the Bid Deadline."

*(Insert in case the Bidder is a Trading Licensee)* "We undertake that we shall not submit any bid, on the basis of power purchase agreement submitted along with our Bid for the same quantum of power and generation source specified therein, for any other bid process till the selection of the Successful Bidder(s) and issue of LOI, or till the

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termination of the process, which ever is earlier, subject to a maximum of period of one hundred and twenty (120) days from the Bid Deadline.

7. (Insert in case the Bidder is a Trading Licensee) We undertake that the power purchase agreement submitted by us as part of the Non Financial Bid is for the exclusive purpose of supplying power to the Procurer(s) under this bid process..
8. (Insert in case of incorporation of Project Company by the Bidding Company/Bidding Consortium) We undertake that if we are selected as the Successful Bidder we shall transfer all Consents, Clearances and Permits in the name of the Project Company within the period specified in the PPA, if such Consents, Clearances and Permits have been obtained in the name of a company other than the Project Company prior to the submission of our Bid.
9. We have assumed that if we are selected as the Successful Bidder, the provisions of the Consortium Agreement submitted along with the Bid, to the extent and only in relation to equity lock in and our liability thereof shall get modified to give effect to the provisions of clause 2.7 of the RFP and Article 15.2 of the PPA. (Applicable only in case of a Bidding Consortium)
10. We confirm that our Bid meets the following conditions:
  - a) The Scheduled Delivery Date is not later than the date specified in the RFP, subject to the provisions of the PPA.
  - b) The quantum of power offered in our Bid is equal to or greater than the Minimum Bid Capacity and is for the following offered capacity.

<b>Financial Bid</b>	<b>Offered Capacity in MW</b>
1	..... MW
2	.....MW
...	
<b>Total of all Financial Bids</b>	<b>.....MW</b>

11. We confirm that the Financial Bid(s) conform(s) to all the conditions in the RFP including:
  - a) Ratio of minimum and maximum Quoted Capacity Charges during the Contract Years for which Tariff has been quoted in Format 4.10 of the Bid is not less than zero point seven (0.7) as provided in Clause 2.4.1.1(B)(x) of the RFP.
  - b) Financial Bid(s) is/are in the prescribed Format 4.10, and is submitted duly signed by the authorised signatory
  - c) Financial Bid(s) is/are unconditional
12. We have neither made any statement nor provided any information in this Bid, which to the best of our knowledge is materially inaccurate or misleading. Further, all the confirmations, declarations and representations made in our Bid are true and accurate. In case this is found to be incorrect after our selection as Successful Bidder, we agree

that the same would be treated as a Seller's event of default under PPA, and consequent provisions of PPA shall apply.

.....  
**Signature and name of authorised signatory in whose name Power of Attorney/ Board Resolution as per Clause 2.4.1.1 is issued**

Original Power of Attorney/ Board Resolution as per Clause 2.4.1.1 is enclosed.

**Rubber stamp of the Bidder to be affixed.**

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**(B) Undertaking from the Financially Evaluated Entity or its Parent Company/  
Ultimate Parent Company  
(On the Letter Head of the Financially Evaluated Entity or its Parent Company/  
Ultimate Parent Company)**

Name:  
Full Address:  
Telephone No.:  
E-mail address:  
Fax / No.:

**To,  
Chief Engineer (RPPC)  
Rajasthan Rajya Vidyut Prasaran Nigam Limited  
Vidyut Bhawan, Janpath, Jyoti Nagar  
Jaipur-302005 (Rajasthan)**

**Dear Sir,**

We refer to the Request for Proposal dated 25.02.09 issued by you for procurement of power for *long* term basis through tariff based competitive bidding process for meeting the requirements of Procurer(s).

(Insert in case of Bidding Company:

“We have carefully read and examined in detail the RFP, including in particular, Clause 2.4.1.1 of the RFP, regarding submission of an undertaking, as per this Format.

We have also noted the amount of the Contract Performance Guarantee required to be submitted as per Clause 2.13 of the RFP by the ..... (Insert the name of the Bidding Company) for the supply of power in the event of it being selected as the Successful Bidder”.

In view of the above, we hereby undertake to you and confirm that in the event of failure of ..... (Insert name of the Bidding Company) to submit the Contract Performance Guarantee in full or in part at any stage, as specified in the RFP, we shall submit the Contract Performance Guarantee for the amount not submitted by ..... (Insert name of the Bidding Company]”).))

(Insert in case of Member of a Consortium:

“We have carefully read and examined in detail the RFP, including in particular, Clause 2.4.1.1 of the RFP, regarding submission of an undertaking, as per this Format.

We confirm that M/s. .... (Insert name of Bidding Company / Consortium Member) has been authorized by us to use our financial capability for meeting the Qualification Requirements as specified in Clause 2.1 of the RFP referred to above.

We have also noted the amount of the Contract Performance Guarantee required to be submitted as per Clause 2.13 of the RFP by the ..... (Insert the

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name of the Consortium Member) for the supply of power in the event of it being selected as the Successful Bidder”).

In view of the above, we hereby undertake to you and confirm that in the event of failure of ..... (Insert name of the Consortium Member) to submit the Contract Performance Guarantee on behalf of the Seller in full or in part at any stage, as specified in the RFP, we shall submit the Contract Performance Guarantee for the amount not submitted by ..... (Insert name of the Consortium Member]”).).

**[Note: Insert the following para in case of a Bidding Consortium OR a Bidding Company opting to invest through a Project Company]**

“We have carefully read and examined in detail the RFP, including in particular, Clause 2.4.1.1 of the RFP, regarding submission of an undertaking, as per this Format.

We have also noted the amount of the equity investment required to be made in the Project Company by the ..... (Insert the name of the Bidding Company/Consortium Member) to be incorporated to undertake the obligations under the PPA for the supply of power.

In view of the above, we hereby undertake to you and confirm that in the event of failure of ..... (Insert name of the Bidding Company/Member of the Consortium) to invest in full or in part, in the equity share capital of the Project Company as specified in the Bid, we shall invest the said amount not invested by ..... (Insert name of the Bidding Company/Member of the Consortium).]”).

We have attached hereto certified true copy of the Board Resolution whereby the Board of Directors of our Company has approved issue of this Undertaking by the Company.

All the terms used herein but not defined, shall have the meaning as ascribed to the said terms under the RFP.

**Signature of Chief Executive Officer / Managing Director / Manager [Refer Notes]**

**Common seal of ..... has been affixed in my/our presence pursuant to Board of Director’s Resolution dated.....**

**WITNESS**

1. ....  
(Signature)  
Name .....  
Designation.....

2. ....  
(Signature)

[Empty rectangular box]

**Name .....**

**Designation.....**

**Notes:**

1. Managing Director/ Chief Executive Officer, being a full time director in the Board of the Bidding Company/ Member of a Consortium.
2. In case of Manager, the Company should confirm through a copy of Board Resolution attested by Company Secretary that the concerned person is appointed as Manager as appointed under Section 269 of the Companies Act, 1956 for the purpose in question. The Company Secretary shall also certify that the Company does not have a Managing Director or Chief Executive Officer. In case of the Bidding Company/Member being a foreign company, the same shall be signed by a person of equivalent position.

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**4.8 Format for Board Resolution**

**Format for the Board resolution to be passed by each Financially Evaluated Entity/ its Parent Company /Ultimate Parent Company.**

The Board, after discussion, at the duly convened Meeting on ..... (Insert date), with the consent of all the Directors present and in compliance of the provisions of the Companies Act, 1956, passed the following Resolution:

**1. RESOLVED THAT** pursuant to the provisions of the Companies Act, 1956 and compliance thereof and as permitted under the Memorandum and Articles of Association of the company, approval of the Board be and is hereby accorded for issuing an Undertaking to the Procurer/ Authorized Representative, in the format specified in the RFP, draft of which is attached hereto and initialled by the Chairman whereby the company undertakes to provide the .....percent (... %) [Insert 100% in case of Bidding Company and percent of equity investment in the Project Company in case of Member of Consortium] of the Contract Performance Guarantee, as per the terms and conditions of the RFP, representing the total amount of Contract Performance Guarantee required to be provided by the ..... (Insert the name of the Bidding Company / Consortium Member), in case of failure of the ..... (Insert the name of the Bidding Company / Consortium Member) to provide such Contract Performance Guarantee.

**[Note: Insert the following para in case of a Bidding Company opting to invest through a Project Company or a Consortium]**

**2. FURTHER RESOLVED THAT** pursuant to the provisions of the Companies Act, 1956 and compliance thereof and as permitted under the Memorandum and Articles of Association of the company, approval of the Board be and is hereby accorded for issuing an undertaking to the Procurer/ Authorized Representative whereby the company undertakes to invest equity in the Project Company to the extent of .....percent (... %), as per the terms and conditions of the RFP, representing the amount of equity required to be provided by ..... (Insert the name of the Bidding Company / Consortium Member), in case of failure of ..... (Insert the name of the Bidding Company / Consortium Member) to invest such equity.

**3. FURTHER RESOLVED THAT** Mr/Ms....., be and is hereby authorized to take all the steps required to be taken by the Company for submission of Bid, including in particular, signing the Bid, making changes thereto and submitting amended Bid, all the documents related to the Bid, certified copy of this Board resolution or letter or undertakings etc, required to be submitted to the Procurer/ Authorized Representative as part of the Bid or such other documents as may be necessary in this regard.

**[Note: In the event the Bidder is a Bidding Consortium, the following Board resolution no. 4 also needs to be passed by the Lead Member of the Bidding Consortium]**

**4. FURTHER RESOLVED THAT** approval of the Board be and is hereby accorded to contribute such additional amount over and above the percentage limit (specified for the

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Lead Member in the Consortium Agreement) to the extent becoming necessary towards the total equity share in the Project Company, obligatory on the part of the Consortium pursuant to the terms and conditions contained in the Consortium Agreement dated ..... executed by the Consortium as per the provisions of the RFP.

**[Note: The following resolution no. 5 is to be provided by the Bidding Company /Lead Member of the Consortium only]**

**5. FURTHER RESOLVED THAT** Mr/Ms....., be and is hereby authorized to take all the steps required to be taken by the Company for submission of Bid, including in particular, signing the Bid, making changes thereto and submitting amended Bid, all the documents related to the Bid, certified copy of this Board resolution or letter or undertakings etc, required to be submitted to the Procurer/ Authorized Representative as part of the Bid or such other documents as may be necessary in this regard.

**Certified True Copy**

**Signature and stamp of Company Secretary / Managing Director of Financially Evaluated Entity/ its Parent Company /Ultimate Parent Company**

**Notes:**

- 1) This certified true copy should be submitted on the letterhead of the Company, signed by the Company Secretary / Managing Director of the Financially Evaluated Entity/ its Parent Company /Ultimate Parent Company.
- 2) The contents of the format may be suitably re-worded indicating the identity of the entity passing the resolution.
- 3) In case of the Board resolution being provided by a company incorporated in India, the Board resolution needs to be notarized by a notified notary. In the event the Board resolution is from a company incorporated outside India, the same needs to be duly notarized in its jurisdiction.
- 4) This format may be modified only to the limited extent required to comply with the local regulations and laws applicable to a foreign entity submitting this resolution. For example, reference to Companies Act 1956 may be suitably modified to refer to the law applicable to the entity submitting the resolution. However, in such case, the foreign entity shall submit an unqualified opinion issued by the legal counsel of such foreign entity, stating that the Board resolutions are in compliance with the applicable laws of the respective jurisdictions of the issuing company and the authorizations granted therein are true and valid.

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**4.9 Format for Bid Bond**

**FORMAT OF THE UNCONDITIONAL AND IRREVOCABLE BANK GUARANTEE FOR BID BOND**

(To be on non-judicial stamp paper of appropriate value as per Stamp Act relevant to place of execution. Foreign entities submitting Bids are required to follow the applicable law in their country.)

In consideration of the ..... (Insert name of the Bidder) submitting the Bid *inter alia* for **supply of power on long term basis through tariff based competitive bidding process for meeting the requirements of Procurer(s)** in response to the RFP dated 25.02.09 issued by **Rajasthan Rajya Vidyut Prasaran Nigam Limited**, (hereinafter referred to as Authorized Representative) and such Authorized Representative agreeing to consider the Bid of ..... *[Insert the name of the Bidder]* as per the terms of the RFP, the ..... (Insert name and address of the bank issuing the Bid Bond, and address of the head office) (here in after referred to as “Guarantor Bank”) hereby agrees unequivocally, irrevocably and unconditionally to pay to the Authorized Representative or its authorized representative at Jaipur (Rajasthan) forthwith on demand in writing from the Authorized Representative or any representative authorized by it in this behalf an amount not exceeding Rupees ..... (Rs.....) only *[Insert amount not less than that derived on the basis of Rs. 3 lakhs per MW multiplied with the total quantum of power offered by the Bidder]*, on behalf of M/s. ....*[Insert name of the Bidder]*.

This guarantee shall be valid and binding on the Guarantor Bank up to and including ..... (Insert date of validity of Bid Bond in accordance with Clause 2.12 of this RFP) and shall not be terminable by notice or any change in the constitution of the Guarantor Bank or by any other reasons whatsoever and our liability hereunder shall not be impaired or discharged by any extension of time or variations or alternations made, given, or agreed with or without our knowledge or consent, by or between concerned parties.

Our liability under this Guarantee is restricted to Rupees ..... (Rs... ..) only. Our Guarantee shall remain in force until **29.10.09** or its authorized representative shall be entitled to invoke this Guarantee until **28.11.09**.

The Guarantor Bank hereby expressly agrees that it shall not require any proof in addition to the written demand from the Authorized Representative or its authorized representative, made in any format, raised at the above mentioned address of the Guarantor Bank, in order to make the said payment to the Authorized Representative or its authorized representative.

The Guarantor Bank shall make payment hereunder on first demand without restriction or conditions and notwithstanding any objection, disputes, or disparities raised by the Bidder or any other person. The Guarantor Bank shall not require the Authorized Representative or its authorized representative to justify the invocation of this BANK GUARANTEE, nor shall the Guarantor Bank have any recourse against the Authorized Representative or its authorized representative in respect of any payment made hereunder.

This BANK GUARANTEE shall be interpreted in accordance with the laws of India and the courts at Jaipur (Rajasthan) shall have exclusive jurisdiction.

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The Guarantor Bank represents that this BANK GUARANTEE has been established in such form and with such content that it is fully enforceable in accordance with its terms as against the Guarantor Bank in the manner provided herein.

This BANK GUARANTEE shall not be affected in any manner by reason of merger, amalgamation, restructuring, liquidation, winding up, dissolution or any other change in the constitution of the Guarantor Bank.

This BANK GUARANTEE shall be a primary obligation of the Guarantor Bank and accordingly, the Authorized Representative or its authorized representative shall not be obliged before enforcing this BANK GUARANTEE to take any action in any court or arbitral proceedings against the Bidder, to make any claim against or any demand on the Bidder or to give any notice to the Bidder to enforce any security held by Authorized Representative or its authorized representative or to exercise, levy or enforce any distress, diligence or other process against the Bidder.

The Guarantor Bank acknowledges that this BANK GUARANTEE is not personal to the Authorized Representative and may be assigned, in whole or in part, (whether absolutely or by way of security) by the Authorized Representative to any entity to whom it is entitled to assign its rights and obligations under the RFP Documents.

The Guarantor Bank hereby agrees and acknowledges that Authorized Representative shall have a right to invoke this Bank Guarantee either in part or in full, as it may deem fit.

Notwithstanding anything contained hereinabove, our liability under this Guarantee is restricted to Rs ..... (Rs..... only) and it shall remain in force until **29.10.09**, with an additional claim period of thirty (30) days thereafter. We are liable to pay the guaranteed amount or any part thereof under this BANK GUARANTEE only if the Authorized Representative or its authorized representative serves upon us a written claim or demand.

In witness whereof the Bank, through its authorized officer, has set its hand and stamp on this ..... day of ..... at .....

**Witness:**

1. ....

Signature  
Name and address.

**Signature**

Name:  
Designation with Bank Stamp

2. ....

Signature  
Name and address

Attorney as per power of attorney No. ....

For:  
..... [Insert Name of the Bank]

[Empty rectangular box for signature]

**Banker's Stamp and Full Address:**

Dated this ..... day of ..... 20.....

Note: The Stamp Paper should be in the name of the Executing Bank.

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**4.10 Format for Financial Bid**

- **Total capacity of power (in MW) offered by the Bidder: ..... MW (..... MW) [To be inserted both in words and figures]**
- **Fractions of the offered total capacity of power (in MW)\* (insert as applicable) (Refer ‘b’ of instructions below):**
  - .....MW (..... MW) [To be inserted both in words and figures],
  - ..... MW (..... MW) [To be inserted both in words and figures],
  - ..... MW (..... MW) [To be inserted both in words and figures].
- **Name of the Interconnection Point ..... (To be inserted by the Bidder)**
- **Name of the Injection Point ..... (To be inserted by the Bidder)\*\***
- **Region and State in which the Injection Point is located ..... (To be inserted by the Bidder)**
- **Whether the STU system be used to transmit power between the Interconnection Point and the Injection Point?: (Insert “Yes” or “No”)**
- **% Transmission loss in STU system\*\*\* ..... (To be inserted by the Bidder only if STU system is involved at Bidder’s end)**
- **Name(s) of the regional ISTS to be involved in transmission of power between the Injection Point and the Delivery Point: ..... (To be inserted by the Bidder)**

\* The Procurer(s) can contract the total capacity of power offered by the Bidder or any combination of the fractions of the offered total capacity.

\*\* Injection Point would be either a CTU Interface or the Delivery Point, at which the Bidder shall supply power to the Procurer(s)

\*\*\* Losses to be considered as mentioned in the relevant tariff orders of the Appropriate Commission as on seven (7) days prior to Bid Deadline.

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Contract Year	Commencement Date of Contract Year	End Date of Contract Year	Quoted Non Escalable Capacity Charges	Quoted Escalable Capacity Charges	Quoted Non Escalable Energy Charges	Quoted Escalable Energy Charges	Quoted Non Escalable Energy Charges	Quoted Escalable Energy Charges	Quoted Non Escalable Inland Transportation Charges	Quoted Escalable Inland Transportation Charges	Quoted Non Escalable Overseas Transportation Charges	Quoted Escalable Overseas Transportation Charges	Quoted Non Escalable Fuel Handling Charges	Quoted Escalable Fuel Handling Charges
			(Rs./ kWh) for Scenario 1,2,3,4,5,6	(Rs./ kWh) for Scenario 1,2,3,4,5,6	(Rs./ kWh) for Scenario 1, 2, 5, 6	(Rs./ kWh) for Scenario 1, 2, 5	(USD/ kWh) for Scenario 3, 4	(USD/ kWh) for Scenario 3, 4	(Rs./ kWh) for Scenario 1, 2, 3, 4, 5	(Rs./ kWh) for Scenario 1, 2, 3, 4, 5	(USD/ kWh) for Scenario 3, 4	(USD/ kWh) for Scenario 3, 4	(Rs./ kWh) for Scenario 3, 4	(Rs./ kWh) for Scenario 3, 4
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)	(13)	(14)	(15)
	1-Apr	31st March		Same as above		Same as above		Same as above		Same as above		Same as above		Same as above
	1-Apr	31st March		Same as above		Same as above		Same as above		Same as above		Same as above		Same as above
	1-Apr	31st March		Same as above		Same as above		Same as above		Same as above		Same as above		Same as above
	1-Apr	31st March		Same as above		Same as above		Same as above		Same as above		Same as above		Same as above
	1-Apr	31st March		Same as above		Same as above		Same as above		Same as above		Same as above		Same as above
	1-Apr	31st March		Same as above		Same as above		Same as above		Same as above		Same as above		Same as above
	1-Apr	31st March		Same as above		Same as above		Same as above		Same as above		Same as above		Same as above
	1-Apr	31st March		Same as above		Same as above		Same as above		Same as above		Same as above		Same as above
	1-Apr	31st March		Same as above		Same as above		Same as above		Same as above		Same as above		Same as above
	1-Apr	31st March		Same as above		Same as above		Same as above		Same as above		Same as above		Same as above
	1-Apr	31st March		Same as above		Same as above		Same as above		Same as above		Same as above		Same as above
	1-Apr	31st March		Same as above		Same as above		Same as above		Same as above		Same as above		Same as above
	1-Apr	31st March		Same as above		Same as above		Same as above		Same as above		Same as above		Same as above
	1-Apr	31st March		Same as above		Same as above		Same as above		Same as above		Same as above		Same as above
	1-Apr	31st March		Same as above		Same as above		Same as above		Same as above		Same as above		Same as above
	1-Apr	31st		Same as		Same as		Same as		Same as		Same as		Same as



Contract Year	Commencement Date of Contract Year	End Date of Contract Year	Quoted Non Escalable Capacity Charges	Quoted Escalable Capacity Charges	Quoted Non Escalable Energy Charges	Quoted Escalable Energy Charges	Quoted Non Escalable Energy Charges	Quoted Escalable Energy Charges	Quoted Non Escalable Inland Transportation Charges	Quoted Escalable Inland Transportation Charges	Quoted Non Escalable Overseas Transportation Charges	Quoted Escalable Overseas Transportation Charges	Quoted Non Escalable Fuel Handling Charges	Quoted Escalable Fuel Handling Charges
(1)	(2)	(3)	(Rs./ kWh) for Scenario 1,2,3,4,5,6	(Rs./ kWh) for Scenario 1,2,3,4,5,6	(Rs./ kWh) for Scenario 1, 2, 5, 6	(Rs./ kWh) for Scenario 1, 2, 5	(USD/ kWh) for Scenario 3, 4	(USD/ kWh) for Scenario 3, 4	(Rs./ kWh) for Scenario 1, 2, 3, 4, 5	(Rs./ kWh) for Scenario 1, 2, 3, 4, 5	(USD/ kWh) for Scenario 3, 4	(USD/ kWh) for Scenario 3, 4	(Rs./ kWh) for Scenario 3, 4	(Rs./ kWh) for Scenario 3, 4
		March		above		above		above		above		above		above
	1-Apr	31st March		Same as above		Same as above		Same as above		Same as above				Same as above
	1-Apr	31st March		Same as above		Same as above		Same as above		Same as above				Same as above
	1-Apr	Last Anniversary of the Contract Period		Same as above		Same as above		Same as above		Same as above				Same as above

**Signature of authorized signatory in whose name Power of Attorney as per Clause 2.4.1.1 is issued.:**

Name and designation of authorized signatory : .....

Place: .....

Date: .....

**Instructions:**

- a) The Bidder may quote for any quantum of power up to the Requisitioned Capacity for the full contract period but not less than the Minimum Bid Capacity.
- b) The Bidder may submit options for fractional capacity (offered part quantum) which it is willing to supply at the same quoted tariff. The number of options for fractional capacity is left to the discretion of the Bidder.
- c) The Quoted Tariff in Rs./kWh shall be provided up to three (3) decimal points and upto five (5) decimal points in case of Quoted Tariff in USD.
- d) All pages of this Format shall be signed by the authorized signatory in whose name Power of Attorney as per Clause 2.4.1.1 is issued.
- e) Ensure **25** values of Non Escalable tariff components and only 1 value for Escalable components.
- f) The Bidder shall not be allowed to submit different Quoted Tariffs for power proposed to be supplied from the same generation source. The Bidder shall submit different Financial Bids for power proposed to be supplied from different generation sources,
- g) The contents of this format shall be clearly typed.
- h) In case of a hydel generation source, the Bidder shall fill in only the Columns 4, 5 and 6 of this Format. The Escalable Energy Charges shall not be applicable for evaluation or payment in such case.

--

**4.11 Format of checklist for submission of Bid**

Submission of Bid requirements	Response (Yes/No)
Covering Letter as per Format 4.1	
Original Power of Attorney as per Format 4.2	
Consortium Agreement as per Format 4.3 (if Bid is submitted by a Bidding Consortium)	
Letter of consent from Consortium Members as per Format 4.4 (if Bid is submitted by a Bidding Consortium)	
Bidder's composition and ownership structure as per Format 4.5	
Details of meeting Qualification Requirement. as per Format 4.6 (A) and (B)	
Documentary evidence for meeting the Qualification Requirement as per Format 4.6 (A) and (B)	
Bidder's Undertaking as per Format 4.7 (A)	
Undertaking from the Financially Evaluated Entity or its Parent Company/ Ultimate Parent Company as per Format 4.7 (B)	
Applicable Board Resolutions as per Format 4.8	
Bid Bond as per Format 4.9	
Financial Bid as per Format 4.10	
Checklist of submission of Bid as per this Format 4.11	

Submission of Bid requirements	Response (Yes/No)
<p>Disclosure as per Format 4.12</p> <p>Details of source of power and primary fuel as per Format 4.13;</p> <p>Certificate of relationship of Parent Company or Affiliate with the Bidding Company or with the Member of the Bidding Consortium, including the Lead Member as per Format 4.14;</p> <p>Calculation sheets detailing computation of Networth considered for meeting Qualifying Requirements.</p> <p>Last 3 financial years' unconsolidated/consolidated audited annual accounts of the Bidder/ each Member (or Financially Evaluated Entity, if different from the Bidder/ each Member) duly certified by the Statutory Auditor.</p> <p>Authority letter in favour of <b>Rajasthan Rajya Vidyut Prasaran Nigam Limited</b> from the Bidder authorising <b>Rajasthan Rajya Vidyut Prasaran Nigam Limited</b> to seek reference from their respective bankers &amp; others.</p> <p>Initialing of all pages of Bid by authorized signatory.</p>	

**Signature of authorized signatory in whose name Power of Attorney as per Clause 2.4.1.1 is issued.:**

Name and designation of authorized signatory : .....

Place: .....

Date: .....

--

#### 4.12 Format for Disclosure

(On the Letter Head of Bidding Company / Each Member in a Bidding Consortium)

#### Disclosure

To:

**Chief Engineer (RPPC)  
Rajasthan Rajya Vidyut Prasaran Nigam Limited  
Vidyut Bhawan, Janpath, Jyoti Nagar  
Jaipur-302005 (Rajasthan)**

**Sub:** Bidders' Disclosure for Bid for supply of power to Procurer(s) in response to the RFP dated 25.02.09

We hereby declare that the following companies with which we have direct or indirect relationship are also separately participating in this bidding process as per following details

Sl. No.	Name of the Company	Relationship
1.		
2.		
3.		

Further we confirm that we don't have any Conflict of Interest with any other Bidder participating in this bid process.

.....  
*Signature of Chief Executive Officer / Managing Director / Manager*

#### Notes:

1. Managing Director/ Chief Executive Officer, being a full time director in the Board of the Bidding Company/ Manager.
2. In case of Manager, the Company should confirm through a copy of Board Resolution attested by Company Secretary that the concerned person is appointed as Manager as defined under the Companies Act, 1956 for the purpose in question. The Company Secretary shall also certify that the Company does not have a Managing Director or Chief Executive Officer.
3. In case there is no such company please fill in the column "Name of the Company" as Nil and under column of Relationship as "Not Applicable".

--

#### 4.13 Details of the generation source and the primary fuel

(Note: In case of Bidder being a Trading Licensee, details in this format is to be furnished by the Bidder in relation to the supplier of power with whom the power purchase agreement has been executed by the Trading Licensee)

##### (A) Details of generation source

Sl. No	Particulars	Details (to be furnished by the Bidder)			
1.	Location of power station (Specify place, district and state)				
2.	No. of existing/ proposed units and installed capacity of each unit (in MW)	<b>Existing</b>			
		<b>Sl. No.</b>	<b>No. of Units</b>	<b>Installed Capacity</b>	<b>COD</b>
		1.			
		2.			
		.....			
		<b>Proposed</b>			
		<b>Sl. No.</b>	<b>No. of Units</b>	<b>Installed Capacity</b>	<b>Expected COD</b>
		1.			
		2.			
		.....			
3.	Primary Fuel				
4.	Dates of last major R&M (unit-wise)	<b>Applicable for existing units</b> S No.    Date 1. 2. ...			
5.	Duration of Fuel Supply Agreement(s) (FSA)				
6.	Quantum of power contracted with other purchasers, if any (in MW)				
7.	Details of surplus capacity (in MW)				

##### (B) Details of primary fuel (The following format is not applicable for Hydel Plants)

S. No	Particulars	Details (to be furnished by the Bidder)
1	<b>Primary fuel</b> (Insert as applicable: “Domestic coal/ Imported coal/ Domestic (pipeline) gas/ Imported gas (R-LNG)”)	
2	<b>Fuel source</b> (Insert as applicable: “Coal India Limited (CIL) coal linkage/ domestic captive coal mine/ imported coal/ domestic (pipeline) gas/ imported gas (R-LNG)”)	
3	<b>Fuel grade</b> (Applicable only in case of coal)	
4	Name of the CIL subsidiary from which coal is proposed to be sourced or name	

--

	and location of the captive coal mine (as applicable)	
6	<p>Bidder to insert the applicable price mechanism, based on whether the primary fuel is covered under:</p> <ol style="list-style-type: none"> <li>1. Administered Price Mechanism ("APM"); or</li> <li>2. Controlled and notified by an independent Regulator; or</li> <li>3. Controlled and notified by the Government of India or Government of India Instrumentality.</li> </ol> <p>(Applicable only for gas)</p>	

**Signature:**

**Name:**

**Designation:**

**Date:**

**Place:**

.....  
*Signature of Chief Executive Officer / Managing Director / Manager*

**Notes:**

1. Managing Director/ Chief Executive Officer, being a full time director in the Board of the Bidding Company/ Manager.
2. In case of Manager, the Company should confirm through a copy of Board Resolution attested by Company Secretary that the concerned person is appointed as Manager as appointed under Section 269 of the Companies Act, 1956 for the purpose in question. The Company Secretary shall also certify that the Company does not have a Managing Director or Chief Executive Officer. In case of the Bidding Company/Member being a foreign company, the same shall be signed by a person of equivalent position.

--

**4.14 Format for certificate of relationship of Parent Company or Affiliate with the Bidding Company or with the Member of the Bidding Consortium, including the Lead Member.**

To,

**Chief Engineer (RPPC)  
Rajasthan Rajya Vidyut Prasaran Nigam Limited  
Vidyut Bhawan, Janpath, Jyoti Nagar  
Jaipur-302005 (Rajasthan)**

Dear Sir,

**Sub: Bid for procurement of power on long term basis through tariff based competitive bidding process in response to the RFP dated 25.02.09**

We hereby certify that M/s....., M/s....., M/s ..... are the Affiliate(s) / Parent Company of the Bidding Company/Member of the Bidding Consortium as per the definition of Affiliate/Parent Company as provided in this RFP and based on details of equity holding as on seven (7) days prior to the Bid Deadline.

The details of equity holding of the Bidding Company/Member of the Consortium in the Affiliate/Parent Company or vice versa as on seven (7) days prior to the Bid Deadline are given as below:

<b>Name of Bidding Company / Member of Bidding Consortium</b>	<b>Name of the Affiliate of the Bidding Company / Member of the Bidding Consortium*</b>	<b>Name of the Parent Company of the Bidding Company / Member of Bidding Consortium</b>	<b>Name of the company having common control on the Affiliate and the Bidding Company / Member of Bidding Consortium</b>

\* Bidding Company / Member of Bidding Consortium to hold at least twenty six percent (26%) in such Affiliate as on seven (7) days prior to Bid Deadline

.....  
**(Insert Name and Signature of Statutory Auditor of the Bidder or practising Company Secretary)**

--



# **SECTION - 5**

## **FORMATS FOR BIDDER'S INFORMATION AND REFERENCE**



## SECTION 5

### 5. FORMATS FOR BIDDER'S INFORMATION AND REFERENCE

The following formats and enclosures are provided for Bidder's information and reference and also to provide assistance in preparation of its Bid.

- i. List of Procurers – 5.1
- ii. Procurer(s) information – 5.2
- iii. Letter of consent from all the participating Procurers – 5.3
- iv. Format of the Joint Deed Agreement to be executed among the participating Procurers – 5.4
- v. RFP Documents – 5.5
- vi. Format for clarifications/ amendments on the RFP/RFP Documents – 5.6
- vii. Format for Contract Performance Guarantee – 5.7
- viii. List of Banks – 5.8
- ix. Illustration for Bid evaluation and computation of Levelized Tariff - 5.9
- x. Transmission charges matrix – 5.10
- xi. Transmission loss matrix – 5.11
- xii. Format for illustration of Affiliates – 5.12

**5.1 List of Procurers** [Insert if applicable]

<b>Sl. No.</b>	<b>Name of Procurer(s)</b>	<b>Address of the Procurer(s)</b>	<b>Power Procurement by the Procurer (MW)</b>
1	<b>Jaipur Vidyut Vitran Nigam Limited (JVVNL)</b>	Vidyut Bhawan, Janpath, Jyoti Nagar, Jaipur – 302005	360 MW
2	<b>Ajmer Vidyut Vitran Nigam Limited (AVVNL)</b>	Old Power House, Hathi Bhata, Jaipur Road, Ajmer	360 MW
3	<b>Jodhpur Vidyut Vitran Nigam Limited (JdVVNL)</b>	New Power House, Industrial Area, Jodhpur	280 MW

--

**5.2 Procurer(s) Information**

**[Procurer/Authorized Representative to enclose the following]**

- 1) Last three available annual audited accounts
- 2) Aggregate Technical and Commercial Losses for last three years as available
- 3) Details regarding existing tariff structure, consumer base
- 4) Details relating to escrow cover of the Procurer(s) as shown below:

Total Escrow Cover already granted as on seven (7) days prior to Bid Deadline	Details
<b>1.</b> .....	.....
<b>2.</b> .....	.....
<b>3.</b> .....	.....

--

**5.3 Letter of Consent from the Procurer(s)** [Insert if applicable]

Enclosures: Letter of consent from the Procurer(s) stating that the entire bid document has been reviewed and each key element of the bid document is agreed to.

--

**5.4 Format of the Joint Deed Agreement among the participating Procurers**

**(To be on non-judicial stamp paper of appropriate value as per Stamp Act relevant to place of execution.)**

Form of Joint Deed Agreement between **Jaipur Vidyut Vitran Nigam Limited, Ajmer Vidyut Vitran Nigam Limited and Jodhpur Vidyut Vitran Nigam Limited** for procurement of power on a long-term basis

**THIS Joint Deed Agreement** executed on this..... day of ..... Two thousand..... between M/s **Jaipur Vidyut Vitran Nigam Limited**, a company/**Board** incorporated under the laws of India and a Distribution Licensee under the Electricity Act 2003 and having its Registered Office at Vidyut Bhawan, Janpath, Jyoti Nagar, Jaipur – 302005 (hereinafter called the "Procurer-1", which expression shall include its successors, executors and permitted assigns), M/s **Ajmer Vidyut Vitran Nigam Limited**, a Company/**Board** incorporated under the laws of India and a Distribution Licensee under the Electricity Act 2003. and having its Registered Office at Old Power House, Hathi Bhata, Jaipur Road, Ajmer (hereinafter called the "Procurer-2", which expression shall include its successors, executors and permitted assigns) and M/s **Jodhpur Vidyut Vitran Nigam Limited**, a Company/**Board** incorporated under the laws of India and a Distribution Licensee under the Electricity Act 2003 and having its Registered Office at New Power House, Industrial Area, Jodhpur (hereinafter called the "Procurer-3", which expression shall include its successors, executors and permitted assigns), for the purpose of procurement of power on long term basis.

WHEREAS, each Procurer individually referred as the Procurer and all the Procurers collectively referred to as the Procurers in this agreement;

WHEREAS, **Rajasthan Rajya Vidyut Prasaran Nigam Limited** the Authorized Representative is inviting Bids for procurement of power as per RFP dated 25.02.09.

NOW THEREFORE, THIS INDENTURE WITNESSTH AS UNDER :

In consideration of the above premises and agreements all the Procurers in this consortium do hereby mutually agree as follows:

Body of the Joint Deed Agreement shall incorporate clauses pertaining to following key principles:

1. Willingness to procure power through the combined Bid process.
2. The share of power to be procured by each Procurer.
3. Agreement on the Lead Procurer and the task to be performed by the Lead Procurer.
4. Responsibility of each Procurer.
5. Methodology of approval of the bid documents including the evaluation criteria, PPA provisions, payment security mechanism, amendment to the bid document and methodology for negotiation with the Successful Bidders by the Procurers.



6. Undertaking that the tariff of the Successful Bidder based on the accepted Bidding process shall be binding on each Procurer.
7. Undertaking to provide agreed Payment Security Mechanism as provided in the PPA by each individual Distribution Licensee corresponding to their share of power.
8. Undertaking that the Successful Bidder in the event of payment default by the defaulting procurer shall not be debarred from sale of power to a third party of its proportionate share as provided in the PPA.

This Joint Deed Agreement

- (d) has been duly executed and delivered on behalf of each Procurer hereto and constitutes the legal, valid, binding and enforceable obligation of each such Procurer,
- (e) sets forth the entire understanding of the Procurer hereto with respect to the subject matter hereof;

IN WITNESS WHEREOF, the parties to the joint Deed agreement have, through their authorized representatives, executed these presents and affixed Common Seals of their respective companies on the Day, Month and Year first mentioned above.

**For M/s Jaipur Vidyut Vitran Nigam Limited**

(Procurer 1)

1. Common Seal of M/s.....  
 .....  
 have been affixed in my/  
 our presence pursuant to  
 Board/Board of Directors Resolution      Name.....  
 dated      Designation.....  
 Signature.....

**For M/s Ajmer Vidyut Vitran Nigam Limited**

(Procurer 2)

2. Common Seal of M/s.....  
 .....  
 have been affixed in my/  
 our presence pursuant to  
 Board/Board of Directors Resolution      Name.....  
 dated      Designation.....  
 Signature.....

**For M/s Jodhpur Vidyut Vitran Nigam Limited**

(Procurer 3)

3. Common Seal of M/s.....  
.....  
have been affixed in my/  
our presence pursuant to  
Board/Board of Directors Resolution  
dated  
Signature.....

(Signature of the authorized representative)

Name.....

Designation.....

--

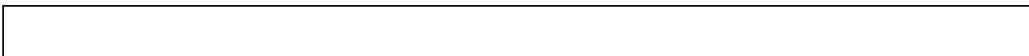


**5.5 Formats for RFP Documents**

ENCLOSURE 1:- Power Purchase Agreement (PPA)

ENCLOSURE 2:- Default Escrow Agreement

ENCLOSURE 3:- Agreement to Hypothecate cum Deed of Hypothecation



**5.6 Format for Clarifications/ Amendments on the RFP/RFP Documents**

<b>Sl. No.</b>	<b>Name of the Document</b>	<b>Clause No. and Existing provision</b>	<b>Clarification required</b>	<b>Suggested text for the amendment</b>	<b>Rationale for the Clarification or Amendment</b>

**This format shall be used for submission of request for clarifications/amendments on the draft RFP Documents as per the provisions of Clause 2.2.6.1 of this RFP.**

.....  
*(Signature and stamp of Chief Executive/Company Secretary of Bidder)*

*Name:*

*Date:*

*Place:*

**Signature of Authorized Signatory of the Bidder:**

**Date:**

**(Please also affix Bidder’s stamp)**

--

**5.7 Format for Contract Performance Guarantee**

**(To be on non-judicial stamp paper of appropriate value as per Stamp Act relevant to place of execution. Foreign entities submitting Bids are required to follow the applicable law in their country. To be provided separately in the name of each of the Procurer(s), in proportion to their Contracted Capacity)**

In consideration of the .....[Insert name of the Successful Bidder with address] agreeing to undertake the obligations under the PPA and the other RFP Documents and ..... [Insert name of Procurer] (herein after referred to as Procurer), agreeing to execute the RFP Documents with the Successful Bidder for **procurement of power on long term basis through tariff based competitive bidding process for meeting the requirements of the Procurer**, the ..... [Insert name and address of the bank issuing the guarantee and address of the head office] (hereinafter referred to as “Guarantor Bank”) hereby agrees unequivocally, irrevocably and unconditionally to pay to the Procurer at .....[Insert address of Procurer] forthwith on demand in writing from the Procurer *or* any Officer authorized by it in this behalf, any amount up to and not exceeding Rupees ..... only [Insert the amount of the bank guarantee computed on the basis of thirty (30) lakhs/MW with respect to the Contracted Capacity of the Procurer as per the terms of PPA on behalf of M/s. .... [Insert name of the Successful Bidder].

This guarantee shall be valid and binding on the Guarantor Bank up to and including .....[Insert date of validity of CPG as per Clause 2.13 of the RFP] and shall in no event not be terminable by notice or any change in the constitution of the Bank or the term of the PPA or by any other reasons whatsoever and our liability hereunder shall not be impaired or discharged by any extension of time or variations or alternations made, given, or agreed with or without our knowledge or consent, by or between parties to the respective agreement.

Our liability under this Guarantee is restricted to Rs. .... (Rs. .... only). Our Guarantee shall remain in force until ..... [Insert the date of validity of the Guarantee as per Clause 2.13 of the RFP]. The Procurer(s) shall be entitled to invoke this Guarantee up to thirty (30) days of the last date of the validity of this Guarantee by issuance of a written demand to invoke this guarantee.

The Guarantor Bank hereby expressly agrees that it shall not require any proof in addition to the written demand from the Procurer(s), made in any format, raised at the above mentioned address of the Guarantor Bank, in order to make the said payment to the Procurer(s) .

The Guarantor Bank shall make payment hereunder on first demand without restriction or conditions and notwithstanding any objection by, ..... [Insert name of the Successful Bidder] and/or any other person. The Guarantor Bank shall not require the Procurer(s) to justify the invocation of this BANK GUARANTEE, nor shall the Guarantor Bank have any recourse against the Procurer(s) in respect of any payment made hereunder.

This BANK GUARANTEE shall be interpreted in accordance with the laws of India and the courts at Jaipur shall have exclusive jurisdiction.

--

The Guarantor Bank represents that this BANK GUARANTEE has been established in such form and with such content that it is fully enforceable in accordance with its terms as against the Guarantor Bank in the manner provided herein.

This BANK GUARANTEE shall not be affected in any manner by reason of merger, amalgamation, restructuring, liquidation, winding up, dissolution or any other change in the constitution of the Guarantor Bank.

This BANK GUARANTEE shall be a primary obligation of the Guarantor Bank and accordingly the Procurer(s) shall not be obliged before enforcing this BANK GUARANTEE to take any action in any court or arbitral proceedings against the Successful Bidder/Seller, to make any claim against or any demand on the Successful Bidder/Seller or to give any notice to the Successful Bidder/Seller or to enforce any security held by the Procurer(s) or to exercise, levy or enforce any distress, diligence or other process against the Successful Bidder/Seller.

The Guarantor Bank acknowledges that this BANK GUARANTEE is not personal to the Procurer(s) and may be assigned, in whole or in part, (whether absolutely or by way of security) by the Procurer(s) to any entity to whom it is entitled to assign its rights and obligations under the PPA.

The Guarantor Bank hereby agrees and acknowledges that the Procurer(s) shall have a right to invoke this Bank Guarantee either in part or in full, as it may deem fit.

Notwithstanding anything contained hereinabove, our liability under this Guarantee is restricted to Rs. .... crores (Rs. .... crores only) and it shall remain in force until **30.11.2013**, with an additional claim period of thirty (30) days thereafter. This BANK GUARANTEE shall be extended from time to time for such period, as may be desired by ..... [Insert name of the Successful Bidder/Seller]. We are liable to pay the guaranteed amount or any part thereof under this Bank Guarantee only if the Procurer(s) serves upon us a written claim or demand.

In witness whereof the Bank, through its authorized officer, has set its hand and stamp on this ..... day of ..... at .....

**Witness:**

- 1. ....  
Name and Address.
- 2. ....  
Name and Address

**Signature**  
Name:  
Designation with Bank Stamp

Attorney as per power of attorney No. ....

For:  
..... [Insert Name of the Bank]

Banker's Stamp and Full Address:

Dated this ..... day of ..... 20.....

**Notes:**

- i. The Stamp Paper should be in the name of the Executing Bank. This date shall be one (1) month after the Bid Validity.

--

## 5.8 List of Banks

### Scheduled Commercial Banks

#### SBI and Associates

1. State Bank of India
2. State Bank of Bikaner and Jaipur
3. State Bank of Hyderabad
4. State Bank of Indore
5. State Bank of Mysore
6. State Bank of Patiala
7. State Bank of Saurashtra
8. State Bank of Travancore

#### Nationalised Banks

9. Allahabad Bank
10. Andhra Bank
11. Bank of India
12. Bank of Maharashtra
13. Bank of Baroda
14. Canara Bank
15. Central Bank of India
16. Corporation Bank
17. Dena Bank
18. Indian Bank
19. Indian Overseas Bank
20. Oriental Bank of Commerce
21. Punjab National Bank
22. Punjab and Sind Bank
23. Syndicate Bank
24. Union Bank of India
25. United Bank of India
26. UCO Bank
27. Vijaya Bank



## **2. Foreign Banks**

- 1 BNP Paribas
- 2 Citi Bank N.A.
- 3 Deutsche Bank A.G.
- 4 The Hongkong and Shanghai Banking Corporation Ltd.
- 5 Standard Chartered Bank
- 6 ABN Amro Bank N.V.
- 7 UFJ Bank Ltd.
- 8 Sumitomo Mitsui Banking Corporation
- 9 Societe Generale
- 10 Barclays Bank
- 11 Bank of Novascotia

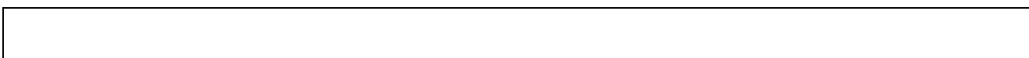
## **3. Scheduled Private Banks**

- 12 ING Vysya Bank Ltd.
- 13 ICICI Bank Ltd.
- 14 HDFC Bank Ltd.
- 15 IDBI Bank Ltd
- 16 Axis Bank
- 17 Kotak Mahindra Bank
- 18 IndusInd Bank

[The above list is indicative and the Procurer/Authorized Representative is authorized to modify the aforesaid list of Banks as deemed fit. Such modification shall not be construed as a change in standard bidding documents.]

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## 5.9 Illustration for Bid Evaluation and Computation of Levelized Tariff





**5.10 Transmission Charges Matrix**

**[To be provided by CERC and to be inserted by Authorized Representative]**

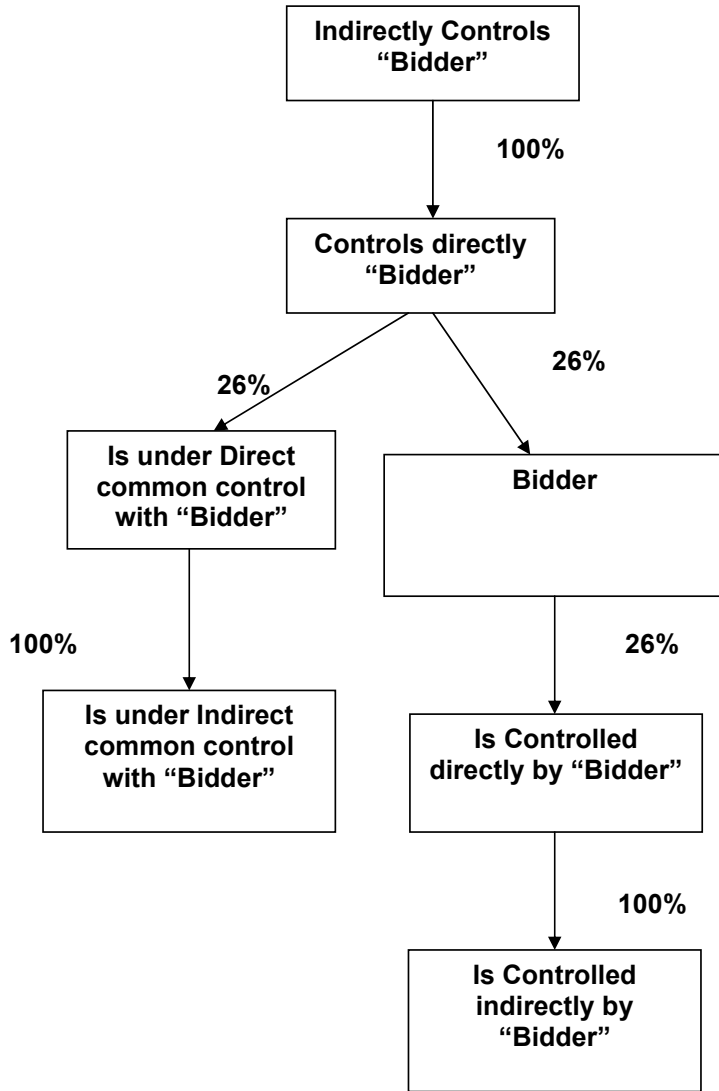
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**5.11 Transmission Loss Matrix**

**[To be provided by CERC and to be inserted by Procurer/Authorized Representative]**

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5.12 Format for illustration of Affiliates



POWER PURCHASE AGREEMENT

FOR

PROCUREMENT OF POWER

FOR

'LONG TERM'

Under Case – 1 Bidding Procedure

THROUGH

TARIFF BASED COMPETITIVE BIDDING PROCESS

(As per Guidelines issued by the Government of India for Determination of Tariff by Bidding Process for Procurement of Power by Distribution Licensees)

FOR MEETING THE BASE LOAD REQUIREMENTS

Amongst

*[Jaipur Vidyut Vitran Nigam Ltd. (JVVNL)]*

("Procurer 1")

and

*[Ajmer Vidyut Vitran Nigam Ltd. (AVVNL)]*

("Procurer 2")

and

*[[Jodhpur Vidyut Vitran Nigam Ltd. (JdVVNL)]*

("Procurer 3")

and

*[Insert Name of the Seller]*

("Seller")

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THIS AGREEMENT<sup>4</sup> IS MADE ON THE [ ] DAY OF [ ] 20[ ]

**Between**

<sup>4</sup> In case the Successful Bidder is supplying power from more than one generation source, then separate PPAs need to be executed for each such generation source;

(1) [Jaipur Vidyut Vitran Nigam Ltd. (JVVNL)], (the “Procurer 1”)

(2) [Ajmer Vidyut Vitran Nigam Ltd. (AVVNL)], (the “Procurer 2”)

(3) [Jodhpur Vidyut Vitran Nigam Ltd. (JdVVNL)], (the “Procurer 3”)

and

[Insert Name of the Seller], (the “Seller”)<sup>5</sup>

[The “Procurer1”, “Procurer 2”, and “Procurer 3” are hereinafter collectively referred to as the “Procurers” and individually as a “Procurer”), and each of the “Procurer” and “the “Seller” are individually referred as “Party” and collectively to as the “Parties”)

Whereas:

- A. In accordance with the Competitive Bidding Guidelines (as defined hereunder), the Authorized Representative, had initiated a competitive bidding process through issue of RFP for procurement of power for r “long” term under Case-1 bidding procedure for meeting the Procurers’ “base load” power requirements.
- B. Pursuant to the said bidding process, ..... [Insert name of Successful Bidder] has been selected by the Authorized Representative, as the Seller for sale and supply of electricity in bulk to the Procurers, for the Aggregate Contracted Capacity (as defined hereunder) of ..... [To be filled in based on Selected Bid] MW, in accordance with the terms of this Agreement.
- C. The ..... [Insert as applicable “Successful Bidder on behalf of the Seller” or “Seller”] has provided to the Procurers, Contract Performance Guarantees as per format specified in Schedule 9 of this Agreement.
- D. [Insert if applicable] The Successful Bidder has incorporated the Project Company by the name, ..... [Insert Name of the Project Company] to execute this Agreement and shall be construed as

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<sup>5</sup> In case of the Successful Bidder being a Bidding Consortium, the Seller shall necessarily be the Project Company and shall sign the Power Purchase Agreement. In case the Successful Bidder is a Bidding Company, and incorporates a separate Project Company, such Project Company would be the Seller and shall sign the Power Purchase Agreement. If the Bidding Company does not incorporate a Project Company, such Successful Bidder being the Bidding Company shall be the Seller and shall sign the Power Purchase Agreement;

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Seller for the purposes of this Agreement and to undertake all the responsibilities and obligations of the Seller.

- E. The Parties hereby agree to execute this Power Purchase Agreement setting out the terms and conditions for the sale of power up to the Aggregate Contracted Capacity by the Seller to the Procurers.
- F. The Procurers agree, on the terms and subject to the conditions of this Agreement, to procure power up to the Aggregate Contracted Capacity and pay the Seller the Tariff as determined in accordance with the terms of this Agreement.
- G. The Procurers have further agreed to make an application to the Appropriate Commission for the adoption of the Tariff under Section 63 of the Electricity Act, 2003.
- H. All the other RFP Documents have been executed by the Procurers and the Seller simultaneously with the signing of this Agreement.
- I. [Insert in case of generation source of the Successful Bidder being in the same state of the Procurer(s) or the Successful Bidder intends to connect the generation source to the STU Interface through a dedicated transmission line] The Procurers and the Successful Bidder/Project Company have mutually agreed on the Delivery Point(s) for supplying power to the Procurers and have incorporated the same in Schedule 1 of this Agreement.

Now therefore, in consideration of the premises and mutual agreements, covenants and conditions set forth herein, it is hereby agreed by and between the Parties as follows:

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1. ARTICLE 1: DEFINITIONS AND INTERPRETATION

## 1.1 Definitions

The terms used in this Agreement, unless as defined below or repugnant to the context, shall have the same meaning as assigned to them by the Electricity Act, 2003 and the rules or regulations framed there under, including those issued/ framed by Appropriate Commission (as defined hereunder), as amended or re-enacted from time to time.

“Act” or “Electricity Act, 2003”	<u>shall mean the</u> Electricity Act, 2003 and any rules, amendments, regulation, notifications, guidelines or policies issued there under from time to time;
“Affiliate”	shall mean a company that either directly or indirectly <ol style="list-style-type: none"><li>controls or</li><li>is controlled by or</li><li>is under common control with</li></ol> a Bidding Company (in the case of a single company) or a Member (in the case of a Consortium) and “control” means ownership by one company of at least twenty six percent (26%) of the voting rights of the other company;
“Aggregate Contracted Capacity”	with respect to the Seller, shall mean [Insert Capacity in MW], the aggregate capacity contracted with the Procurers for supply at the Interconnection Point from the Power Station’s Net Capacity;
“Agreement” or “Power Purchase Agreement” or “PPA”	shall mean this Power Purchase Agreement including its <u>recitals and</u> Schedules, amended or modified from time to time in accordance with the terms hereof;
“Appropriate Commission”	shall mean the the CERC, or the SERC or the Joint Commission referred to in Section 83 of the Electricity Act 2003, as the case may be;
“Assessed Capacity”	in relation to the Power Station, shall mean the result of the most recent capacity assessment carried out by the Control Centre or [ <i>Insert “the Seller” if Seller is NOT a Trading Licensee, or “as ensured by the Seller” if Seller is a Trading Licensee</i> ] in accordance with Article 5.5 of this Agreement;

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<u>“Authorized Representative”</u>		<u>shall mean Rajasthan Rajya Vidyut Prasaran Nigam Ltd, the body corporate authorized by the Procurers to carry out the bidding process for the selection of the Successful Bidder on their behalf;</u>
“Availability Based Tariff” or “ABT”		<u>shall mean all the regulations contained in the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2004, as amended or revised from time to time, to the extent applied as per the terms of this Agreement;</u>
“Availability Factor” or “Availability”		<u>shall have the meaning ascribed thereto in ABT (provided that in place of Installed capacity and Normative auxiliary consumption it shall be Aggregate Contracted Capacity);</u>
“Available Capacity”		<u>shall have the meaning ascribed thereto in ABT;</u>
“Bid”		<u>shall mean Non-Financial Bid and Financial Bid submitted by the Successful Bidder, in response to the RFP, in accordance with the terms and conditions of the RFP;</u>
“Bid Deadline”		<u>shall mean the last date and time for submission of the Bid in response to the RFP;</u>
“Bidding Company”		<u>shall refer to such</u> single company that has submitted the Bid in accordance with the provisions of the RFP;
“Bidding Consortium” or “Consortium”		<u>shall mean</u> a group of companies that has collectively submitted the Bid;
“Bidding Guidelines” or “Competitive Bidding Guidelines”		<u>shall mean the “Guidelines for Determination of Tariff by Bidding Process for Procurement of Power by Distribution Licensees”, issued by Ministry of Power, Government of India, under Section 63 of the Electricity Act, 2003 on January 19, 2005 and as amended from time to time till the Bid Deadline;</u>
“Bill Dispute Notice”		shall mean the notice issued by a Party raising a <u>Dispute</u> regarding a Monthly Bill or a Supplementary Bill issued by the other Party;
“Business Day”		shall mean <u>with respect to Seller and Procurers,</u> a day other than Sunday or a statutory holiday, on which the banks remain open for business in <u>the State of Rajasthan;</u>
“Capacity Charge” or “Capacity Charges”		shall have meaning <u>ascribed thereto</u> in Schedule 4;
[Insert definition in case	<i>this</i>	<u>shall mean the lower of the following:</u> (a) <u>actual capital cost of the Power Station on a relevant</u>

Seller is not a Trading Licensee]“Capital Cost”

date which shall not be later than the Delivery Date, as certified by the auditors appointed jointly by the Seller and Procurers (jointly); or  
(b) total cost of the Power Station as set forth in the Financing Agreements.

Provided that Capital Cost shall always exclude cost overruns arising due to a Seller Event of Default, or costs due to events for which compensation has been received by Seller from the Procurers or Insurers or third parties;

Provided further that the Capital Cost in relation to an unit shall be the total cost of the Power Station allocated in proportion to the Aggregate Contracted Capacity;

[Insert this definition in case Seller is not a Trading Licensee]“Capital Structure Schedule”

shall mean sources of finance used to finance the Capital Cost of the Power Station as provided in the Financing Agreements;

“Central Transmission Utility” or “CTU”

shall mean the utility notified by the Central Government under Section-38 of the Electricity Act 2003;

“CERC”

shall mean the Central Electricity Regulatory Commission of India, constituted under sub – section (1) of Section 76 of the Electricity Act, 2003, or its successors;

“Change in Law”

shall have the meaning ascribed thereto in Article 10.1.1 of this Agreement;

“Competent Court of Law”

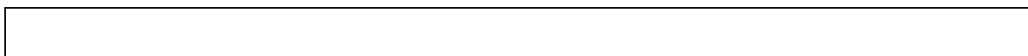
shall mean any court or tribunal or any similar judicial or quasi-judicial body in India that has jurisdiction to adjudicate upon issues relating to this Agreement;

“Consents, Clearances and Permits”

shall mean all authorizations, licenses, approvals, registrations, permits, waivers, privileges, acknowledgements, agreements, or concessions required to be obtained from or provided by any concerned authority for the purpose of setting up of the generation facilities and/ or supply of power;

“Consultation Period”

shall mean the period of ninety (90) days or such other longer period as the Parties may agree, commencing from the date of issuance of a Seller Preliminary Default Notice or a Procurer Preliminary Default Notice as provided in Article 11 of this Agreement, for consultation between the



Parties to mitigate the consequence of the relevant event having regard to all the circumstances;

“Contract Performance Guarantee”

shall mean the irrevocable unconditional bank guarantee, submitted or to be submitted by the Seller or the Successful Bidder on behalf of the Seller to the Procurers from a bank mentioned in Schedule 11 of this Agreement in the form attached hereto as Schedule 9, in accordance with the terms of this Agreement and RFP;

“Contract Year”

shall mean the period commencing on the Effective Date (as defined hereunder) and ending on the immediately succeeding March 31 and thereafter each period of twelve (12) months commencing on April 1 and ending on March 31;

Provided that:

(i) in the financial year in which the Scheduled Delivery Date would occur, the Contract Year shall end on the date immediately before the Scheduled Delivery Date and a new Contract Year shall commence once again from the Scheduled Delivery Date and end on the immediately succeeding March 31, and thereafter each period of twelve (12) months commencing on April 1 and ending on March 31, and

(ii) provided further that the last Contract Year of this Agreement shall end on the last day of the Term of this Agreement;

And further provided that for the purpose of payment, the Tariff shall be the Quoted Tariff for the applicable Contract Year as per Schedule 8 of this Agreement;

“Contracted Capacity”

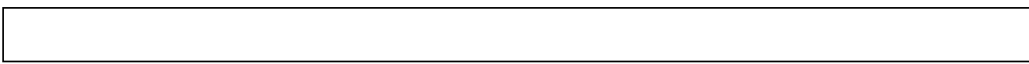
with respect to each Procurer, *shall mean the allocation of the Aggregate Contracted Capacity to each of the Procurers as provided in Schedule 1 hereof, subject to adjustment as per terms of this Agreement;*

“Control Centre”

shall mean the RLDC and/or SLDC or such other load control centre designated by the Procurer(s) from time to time through which the Procurers shall issue Dispatch Instructions to the Seller for supply of power;

[Insert this definition in case Seller is not a Trading Licensee]“Debt

shall mean the amounts which are due under the Financing Agreements by the Seller to the Lenders, expressed in Rupees (with all amounts denominated in currencies other than Rupees being converted to Rupees at the reference exchange rate, which is the selling rate in



Service”	Rupees for the foreign currency on the relevant Day, as notified by the State Bank of India as its TT Rate at 12:00 noon of the date of Notice to Proceed);
"Declared Capacity"	<i>shall mean the Power Station’s Net Capacity at the relevant time at the Interconnection Point (expressed in MW) as declared by the Seller in <u>accordance with the Grid Code and dispatching procedures as per the Availability Based Tariff</u>;</i>
“Delivery Date”	shall mean the date on which the Seller commences supply of the Aggregate Contracted Capacity to the Procurers;
"Delivery Point"	shall mean the STU Interface(s) as specified in Schedule 1 of this Agreement;
“Developer” [Insert this definition in case the Seller is a Trading Licensee]	shall mean the owner of the Power Station from which the Seller shall supply the Aggregate Contracted Capacity to the Procurers;
<u>“Direct Non-Natural Force Majeure Event”</u>	<u>shall have the meaning ascribed thereto in Article 9.3 of this Agreement;</u>
<u>“Dispatch Instruction”</u>	shall mean any instruction issued by the <u>Procurer(s) through the concerned SLDC / RLDC</u> to the Seller, in accordance with applicable Grid Code and this <u>Agreement</u> ;
“Dispute”	shall mean any dispute or difference of any kind between a Procurer and the Seller or between the Procurers <u>(jointly)</u> and the Seller, in connection with or arising out of this Agreement including but not limited to any issue on the interpretation and scope of the terms of this Agreement <u>as provided in Article 14 of this Agreement</u> ;
"Due Date"	shall mean the thirtieth (30th) day after a Monthly Bill or a Supplementary Bill is received <u>and duly acknowledged</u> by <u>the</u> Procurers or, if such day is not a Business Day, the immediately succeeding <u>Business Day</u> , by which date such Monthly Bill or a Supplementary Bill is payable by <u>such</u> Procurers;
<u>“Effective Date”</u>	<u>shall have the meaning ascribed thereto in Article 2.1 of this Agreement;</u>
“Electricity Laws”	shall mean the Electricity Act, 2003 and the rules and regulations made <u>thereunder</u> from time to time along with amendments <u>thereto</u> and replacements thereof and any



other Law pertaining to electricity including regulations framed by the Appropriate Commission;

**“Energy Charge” or “Energy Charges”**

**shall have the meaning ascribed to this term under Schedule 4 of this Agreement;**

**“Event of Default”**

shall mean the events as defined in Article 11 of this Agreement;

**“Expiry Date”**

shall mean the date which is the twenty fifth (25th) anniversary of the Delivery Date or such extended period as mutually agreed upon by both Parties;

**“Financial Closure”**

**shall mean the execution of all the Financing Agreements required for the Power Station and fulfillment of conditions precedents and waiver, if any, of any of the conditions precedent for the initial draw down of funds there under;**

***[Insert this definition in case Seller is not a Trading Licensee]***

**“Financing Agreements”**

**shall mean** the agreements pursuant to which the Seller has sought financing for the Power Station including the loan agreements, security documents, notes, indentures, security agreements, letters of credit and other documents, as may be amended, modified, or replaced from time to time, but without in anyway increasing the liabilities of the Procurers;

**“Force Majeure” or “Force Majeure Event”**

**shall have the meaning ascribed thereto in Article 9.3 of this Agreement;**

**“Fuel”**

shall mean the primary fuel used to generate electricity **namely ..... [Insert name of the fuel as applicable, namely domestic coal, imported coal, domestic (pipeline) gas, or imported gas (RLNG)];**

**“Fuel Supply Agreement(s)” [this definition shall be deleted for Sellers who have hydro projects or captive coal mine based projects as generation source]**

shall mean the **agreement(s)** entered into between the ..... ***[Insert “Seller” if Seller is NOT a Trading Licensee, or “Developer” if Seller is a Trading Licensee]*** and the fuel supplier for the purchase, **transportation** and handling of the **Fuel**, required for the operation of the **Power Station**.

In case the transportation of the **Fuel** is not the responsibility of the fuel supplier, the Fuel Supply Agreement shall also include the separate agreement between the ..... ***[Insert “Seller” if Seller is NOT a Trading Licensee, or “Developer” if Seller is a Trading Licensee]*** and the fuel transporter for the transportation of **Fuel** in addition to the agreement between the ..... ***[Insert “Seller” if Seller is NOT a Trading Licensee, or “Developer” if Seller is a Trading Licensee]***



and the fuel supplier for the supply of the Fuel;

**"Grid Code" /  
"IEGC" or "State  
Grid Code"**

shall mean the Grid Code specified by the Central Commission under Clause (h) of Sub-section (1) of Section 79 of the Electricity Act and/or the State Grid Code as specified by the concerned State Commission, referred under Clause (h) of Sub-section (1) of Section 86 of the Electricity Act 2003, as applicable;

**"Indian  
Governmental  
Instrumentality"**

shall mean the Government of India, Governments of state(s) of Rajasthan, [Insert the name(s) of the state(s) in India, where the, the Seller and the Power Station are located] and any ministry, department, board, authority, agency, corporation, commission under the direct or indirect control of Government of India or any of the above state Government(s) or both, any political sub-division of any of them including any court or Appropriate Commission(s) or tribunal or judicial or quasi-judicial body in India but excluding the Seller and the Procurers;

**"Indirect Non-  
Natural Force  
Majeure Event"**

shall have the meaning ascribed thereto in Article 9.3 of this Agreement;

**"Injection Point"**

shall mean the ..... [Insert Injection Point] as specified by the Successful Bidder in Format 4.10 of the Selected Bid (Schedule 10 of this Agreement);

**"Installed Capacity"**

1.1 shall mean the sum of nameplate capacities of the units of the Power Station, confirmed by the respective performance tests;

**"Insurances"**

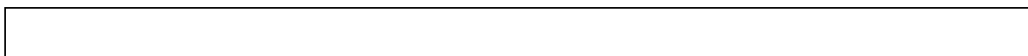
1.2 shall mean the insurance cover to be obtained and maintained by the [*Insert "Seller" if Seller is NOT a Trading Licensee, or "Developer" if Seller is a Trading Licensee*] in accordance with Article 7 of this Agreement;

**"Interconnection  
Facilities"**

1.3 shall mean the facilities on the Procurers' side of the Delivery Point for receiving and metering the electrical output in accordance with this Agreement and which shall include, without limitation, all other transmission lines and associated equipments, transformers, relay and switching equipment and protective devices, safety equipment and, subject to Article 6, the Metering System required for supply of power as per the terms of this Agreement;

**"Interconnection  
Point"**

1.4 shall mean the point where the power from the Power Station switchyard bus of the Seller is injected into the interstate/intrastate transmission system (including the dedicated transmission line connecting the Power Station with the interstate/intrastate transmission system);



**“Invoice” or “Bill”** shall mean either a Monthly Invoice, or a Supplementary Invoice by any of the Parties;

**“Late Payment Surcharge”** shall have the meaning ascribed thereto in Article 8.3.5 of this Agreement;

**“Law”** shall mean in relation to this Agreement, all laws including Electricity Laws in force in India and any statute, ordinance, regulation, notification or code, rule, or any interpretation of any of them by an Indian Governmental Instrumentality and having force of law and shall further include without limitation all applicable rules, regulations, orders, notifications by an Indian Governmental Instrumentality pursuant to or under any of them and shall include without limitation all rules, regulations, decisions and orders of the Appropriate Commission;

**“Lead Member”** shall mean ..... [Insert name of company], which company holds equity stake in the Seller in accordance with Article 15.2.2 of this Agreement and so designated by other Member(s) of the Bidding Consortium in accordance with the consortium agreement as specified in the RFP;

**“Lead Procurer”** shall have the meaning ascribed thereto in Article 15.1;

**[Insert this definition in case Seller is not a Trading Licensee]**  
**“Lender(s)”**

*shall mean the banks, other financial institutions, multilateral agencies, RBI registered non banking financial companies, mutual funds and agents or trustees of debenture/ bond holders, including their successors and assignees, who have agreed as on or before commencement of supply of power from the Power Station to provide the Seller with the debt financing described in the Capital Structure Schedule, and any successor banks or financial institutions to whom their interests under the Financing Agreements may be transferred or assigned:*

*Provided that, such assignment or transfer shall not relieve the Seller of its obligations to the Procurers under this Agreement in any manner and does not lead to an increase in the liability of the Procurers at any given point of time;*

*[Insert this definition in case Seller is not a Trading Licensee]* shall mean the person notified by the Lenders in writing as being the representative of the Lenders and such person may from time to time be replaced by the Lenders pursuant to the Financing Agreements by written notice to the Seller ;



“Lender  
's  
Repre  
ntative”

**“Letter of Credit” or  
“L/C”**

*shall have the meaning ascribed thereto in Article 8.4.1 of this Agreement;*

**“Letter of Intent” or  
“LOI”**

*shall mean the letter issued by the Authorized Representative to the Successful Bidder for supply of power pursuant to the RFP;*

**[Insert in case of  
multiple Procurers]  
“Majority  
Procurers”**

*shall have the meaning ascribed thereto in Article 15.1.4 of this Agreement;*

**“Member” [Insert  
this definition only  
in case the Seller is  
a Bidding  
Consortium]**

**mean Member of the Bidding Consortium who is holding equity of the Seller as per the terms of the consortium agreement;**

**“Meters” or  
“Metering System”**

**shall mean meters used for accounting and billing of electricity in accordance with Central Electricity Authority (Installation and Operations of Meters) Regulations, 2006, Grid Code and ABT, as amended from time to time;**

**“Minimum Offtake  
Guarantee”  
(Applicable in case  
of linkage-based  
coal/imported  
coal/domestic gas/  
imported LNG  
based projects)**

**shall mean guaranteed offtake of ..... percent (.....%) [Insert percent of offtake] of the Aggregate Contracted Capacity for the Procurer or all Procurers taken together, as the case may be, during a Contract Year<sup>6</sup>.**

**“Month”**

**shall mean a period of thirty (30) days from (and excluding) the date of the event, where applicable, else a calendar month;**

**“Monthly Bill” or  
“Monthly Invoice”**

**shall mean a monthly invoice comprising of Capacity Charges (applicable after Delivery Date) and Energy Charges (as applicable), including incentive and penalty, as per Schedule 4 hereof;**

**“Natural Force  
Majeure Event”**

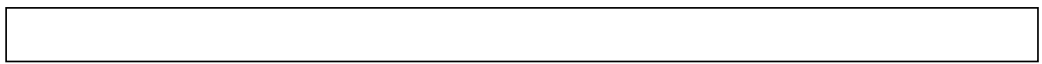
**shall have the meaning ascribed thereto in Article 9.3 of this Agreement;**

<sup>6</sup> To be decided by the Procurer but needs to be aligned with the prevalent CERC norms

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<b><u>“Non-Natural Force Majeure Event”</u></b>	shall have the meaning ascribed thereto in Article 9.3 <u>of this Agreement</u> ;
<b>“Normative Availability”</b>	shall mean eighty five percent <u>(85%)Availability of the Aggregate Contracted Capacity at the Interconnection Point on Contract Year</u> basis.
<b>“Notice to Proceed” or “NTP”</b> <i>[to be inserted only in case of long term procurement]</i>	<u>shall mean the date on which the [Insert “Seller” if Seller is NOT a Trading Licensee, or “Developer” if Seller is a Trading Licensee] shall fulfill the conditions as contained in Article 3.1.1 of this Agreement in accordance with the provisions of this Agreement;</u>
<b><u>“Operating Period”</u>;</b>	<u>shall mean the period commencing from the Delivery Date,</u> until the Expiry Date or date of earlier termination of this Agreement in accordance with Article 2 of this Agreement;
<b>“Parent Company” or “Parent”</b>	shall mean a company that holds at least twenty six percent (26%) of the paid-up equity capital directly or indirectly in the Seller or in the Member, as the case may be;
<b>“Party” and “Parties”</b>	shall have the meaning ascribed thereto in the recital to this Agreement;
<b>“Payment Mechanism”</b>	shall have the meaning ascribed thereto in Article 8.4 <u>of this Agreement</u> ;
<b>“Power Station”</b>	shall mean the .... <i>[Insert name of generation source specified by the Successful Bidder in its Bid]</i> power generation facility of installed capacity of ..... <i>[Insert capacity ]</i> MW, located at ..... <i>[Insert name of the place]</i> in .... <i>[Insert name of the District and State]</i> ; <u>This includes all units and auxiliaries such as associated Fuel handling, treatment or storage facilities; water supply, treatment or storage facilities; the ash disposal system including ash dyke [if applicable]; bay/s for transmission system in the switchyard, dam, intake, water conductor system [if applicable] , and all the other assets, buildings/structures, equipments, plant and machinery, facilities and related assets required for the efficient and economic operation of the power generation facility; whether completed or at any stage of development and construction or intended to be developed and constructed for the purpose of supply of power as per this Agreement;</u>
<b>“Power Station’s Net Capacity”</b>	shall mean [.....] MW, being Installed Capacity of the Power Station measured at the bus-bar, reduced by the normative auxiliary power consumption as prescribed by CERC from time to time;



In case of a dedicated transmission line connecting the bus-bar and the Interconnection Point, the Power Station's Net Capacity shall be ....MW, being the Installed Capacity of the Power Station measured at the Interconnection Point and reduced by the normative auxiliary power consumption and losses, if any, of such dedicated transmission line;

**“Preliminary Default Notice”** shall have the meaning ascribed thereto in Article 11 of this Agreement;

**“Project Company”** shall mean the company where incorporated by the Successful Bidder, as per Indian laws, to undertake all rights and obligations of the Seller and to sign this Agreement for the supply of power to the Procurers as per the terms of this Agreement;

**“Provisional Bill”** shall mean the bill raised by the Seller as ascribed thereto in Article 8.3.6 of this Agreement;

1.5 "Prudent Utility Practices" shall mean the practices, methods and standards that are generally accepted internationally from time to time by electric utilities for the purpose of ensuring the safe, efficient and economic design, construction, commissioning, operation and maintenance of power generation equipment and which practices, methods and standards shall be adjusted as necessary, to take account of:

a) operation and maintenance guidelines recommended by the manufacturers of the plant and equipment to be incorporated in the Power Station;

b) the requirements of Indian Law; and

the physical conditions at the site of the Power Station;

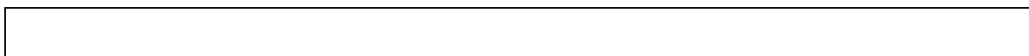
**“Quoted Capacity Charges”** shall mean the sum total of Quoted Non Escalable Capacity Charges and Quoted Escalable Capacity Charges;

**“Quoted Energy Charges”** shall mean the sum total of Quoted Non Escalable Energy Charges and Quoted Escalable Energy Charge;

**“Quoted Escalable Capacity Charges”** shall have the meaning as ascribed thereto in Column 5 of Schedule 8 of this Agreement;

**“Quoted Escalable Energy Charges”** [In case of Fuel being other than imported coal/ imported R-LNG] shall have the meaning as ascribed thereto in Column 7 of Schedule 8 of this Agreement;

[In case of Fuel being imported coal/ imported R-LNG] shall have the meaning as ascribed thereto in Column 9 of Schedule 8 of this Agreement;



“Quoted Escalable Fuel Handling Charges” [Insert this definition if applicable] shall have the meaning as ascribed thereto in Column 15 of Schedule 8 of this Agreement;

“Quoted Escalable Inland Transportation Charges” [Insert this definition if applicable] shall have the meaning as ascribed thereto in Column 11 of Schedule 8 of this Agreement;

“Quoted Escalable Overseas Transportation Charges” [Insert this definition if applicable] shall have the meaning as ascribed thereto in Column 13 of Schedule 8 of this Agreement;

“Quoted Non Escalable Capacity Charges” shall have the meaning as ascribed thereto in Column 4 of Schedule 8 of this Agreement;

“Quoted Non Escalable Energy Charges” [In case of Fuel being other than imported coal/ imported R-LNG] shall have the meaning as ascribed thereto in Column 8 of Schedule 8 of this Agreement;

[In case of Fuel being imported coal/ imported R-LNG] shall have the meaning as ascribed thereto in Column 6 of Schedule 8 of this Agreement;

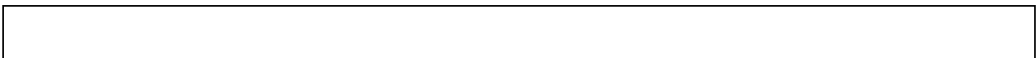
“Quoted Non Escalable Fuel Handling Charges” shall have the meaning as ascribed thereto in Column 14 of Schedule 8 of this Agreement;

[Insert this definition if applicable]

“Quoted Non Escalable Inland Transportation Charges” [Insert this definition if applicable] shall have the meaning as ascribed thereto in Column 10 of Schedule 8 of this Agreement;

“Quoted Non Escalable Overseas Transportation Charges” [Insert this definition if shall have the meaning as ascribed thereto in Column 12 of Schedule 8 of this Agreement;

Insert this definition if



applicable]

“Quoted Tariff “ shall mean the sum total of Quoted Energy Charges and Quoted Capacity Charge;

“RBI” shall mean the Reserve Bank of India;

“Rebate” shall have the same meaning as ascribed thereto in Article 8.3.6 of this Agreement;

“Receivables” shall have the meaning as ascribed thereto in Article 8.4.11 of this Agreement;

"Regional Energy Accounts" or "REA" shall have the same meaning as in the Grid Code and issued by the relevant RPC secretariat or other appropriate agency for each Week and for each Month (as per their prescribed methodology), including the revisions and amendments thereof;

“Revised Scheduled Delivery Date” shall have the meaning ascribed thereto in Article 4.1 of this Agreement;

“RFP” shall mean the Request For Proposal document along with all formats dated 25.02.09 issued by the Authorized Representative and shall include any modifications, amendments or alterations and clarifications thereto;

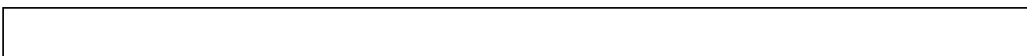
“RFP Documents” shall mean the following documents entered into in respect of the procurement of power, by the Parties to the respective agreements:

- a) PPA;
- b) Default Escrow Agreement;
- c) Agreement to Hypothecate cum Deed of Hypothecation; and

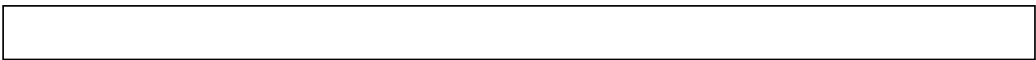
"RLDC" shall mean the relevant Regional Load Dispatch Centre established under Sub-section (1) of Section 27 of the Electricity Act, 2003;

"RPC" shall mean the relevant Regional Power Committee established by the Government of India for a specific region in accordance with the Electricity Act, 2003 for facilitating integrated operation of the power system in that region;

"Rupees" or "Rs." shall mean Indian rupees, the lawful currency of India;



<b><u>"SBAR"</u></b>	<b>shall mean the prime lending rate per annum applicable for loans with one (1) year maturity as fixed from time to time by the State Bank of India. <u>In</u> the absence of such rate, SBAR shall mean any other arrangement that substitutes such prime lending rate as mutually agreed to by the Parties;</b>
<b><u>"Scheduled Delivery Date"</u></b>	<i>shall have the meaning ascribed thereto in Article 4.1 of this Agreement;</i>
<b>"Scheduled Energy" or "Scheduled Generation"</b>	<b>Shall mean scheduled generation as defined in the ABT;</b>
<b>"Scheduled Outage"</b>	<b>shall mean the final outage plan as approved by the RPC as per the provisions of the Grid Code;</b>
<b><u>"Selected Bid"</u></b>	<b><u>shall mean the Bid of the Successful Bidder as accepted by the Procurer/ Authorized Representative, copy of which is attached herewith and marked as Schedule 10 of this Agreement;</u></b>
<b><u>"Selectee"</u></b> <i>[Insert if the Seller chooses the option of Lender's substitution rights]</i>	<b><u>shall mean a new company (i) proposed by the Lenders pursuant to Schedule 12 hereof and approved by the Procurers (ii) or proposed by the Procurers in accordance with Schedule 12 hereof and approved by the Lenders, for substituting the Seller for the residual period of the PPA by amendment of the PPA or by execution of a fresh PPA in accordance with the terms and conditions contained in the said Schedule;</u></b>
<b><u>"SERC"</u></b>	<i>shall mean the Electricity Regulatory Commission of any State in India constituted under Section-82 of the Electricity Act, 2003 or its successors, and includes a Joint Commission constituted under Sub-section (1) of Section 83 of the Electricity Act 2003;</i>
<b>"Settlement Period"</b>	<b><u>shall mean</u> the time period for the issuance of daily generation and drawl schedules as <u>provided in ABT</u>;</b>
<b>"SLDC"</b>	<b>shall mean the centre established under Sub-section (1) of Section 31 of the Electricity Act 2003, relevant for the <u>State(s)</u> where either of the Interconnection Point, the Injection Point and/or the Delivery Point are located;</b>
<b>"SLDC Charges"</b>	<b><u>shall mean the charges levied by any of the relevant SLDCs for the supply of power by the Seller to the Procurers;</u></b>
<b>"State Transmission"</b>	<b><u>shall mean</u> the Board or the Government company notified by the respective State Government under Sub-section (1)</b>



Utility” or “STU” of Section 39 of the Act;

“STU Interface”

*shall mean the point at which the CTU network is connected to the intrastate transmission system of the Procurers’ State, and at which the Procurers agree to receive power up to the Requisitioned Capacity;*

*For generation source in the same state as that of the Procurers, the STU Interface shall be the bus-bar of the generating station from which power is contracted to be supplied, at an appropriate voltage level as specified by the STU.*

“Substitution Notice”

shall have the same meaning as ascribed to in Clause 12.3 of Schedule 12 of this Agreement;

“Successful Bidder”

shall mean the Bidder selected by the Authourized Representative pursuant to the RFP for supply of power by itself or through the Project Company to the Procurers as per the terms of PPA and other RFP Documents, and to whom a LOI has been issued;

“Supplementary Bill”

shall mean a bill other than a Monthly Bill raised by any of the Parties in accordance with Article 8 of this Agreement;

“Tariff”

shall mean the tariff as computed in accordance with Schedule 4 of this Agreement;

“Tariff Payment”

shall mean the payments to be made under Monthly Bills as referred to in Schedule 4 and the relevant Supplementary Bills;

“Termination Notice”

shall mean the notice given by either Parties for termination of this Agreement in accordance with Articles 3.4.2, 3.4.3, 3.4.4, 3.4.5, 4.1.1, 11.3.4, 11.4.5, 11.5.1 and Clause 7.2.3 of Schedule 7 of this Agreement;

“Term of Agreement”

shall have the meaning ascribed thereto in Article 2.2 of this Agreement;

[Insert this definition in case Seller is not a Trading Licensee]

“Total Debt Amount”

shall mean the sum of the following amounts, expressed in Rupees (with all amounts denominated in currencies other than Rupees being converted to Rupees at the reference exchange rate, which is the selling rate in Rupees for the foreign currency on the relevant Day, as notified by the State Bank of India as its telegraphic transfer rate at 12:00 noon on the date of issuance of Substitution Notice by the Lenders

- (a) the principal amount of the debt incurred by the Seller (as per the terms of the Financing Agreements) to finance the Power Station according to the Capital Structure Schedule which

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remains outstanding on the date of issuance of Substitution Notice by the Lender after taking account of any debt repayments which could have been made out of the Tariff Payments received by the Seller on or before the date of issuance of Substitution Notice by the Lender as per the terms provided in the Financing Agreements; and

- (b) all accrued interest and financing fees payable under the Financing Agreements on the amounts referred to in (a) above from the date of the Capacity Charge payment (as specified in Clause 4.2.1 of Schedule 4 hereof) immediately preceding the date of issuance of Substitution Notice by the Lender or, if the Capacity Charges have not yet fallen due to be paid, from the most recent date when interest and financing fees were capitalised.

**[Insert if applicable]** shall mean the Seller which is an Electricity Trader and  
**“Trading Licensee”** has submitted an exclusive power purchase agreement executed with the Developer;

**“Transmission Service Agreement”** shall mean the agreements(s) signed by the Seller and the relevant transmission licensee for transmission of power up to the Aggregate Contracted Capacity from the Injection Point to the Delivery Point;

**“Ultimate Parent Company”** shall mean a company which directly or indirectly owns at least twenty six percent (26%) paid up equity capital in the Seller or Member (as the case may be) and such Seller or Member (as the case may be) shall be under the direct control or indirectly under the common control of such company;

**“Unscheduled Interchange” or “UI”** shall have the meaning ascribed thereto in Rule 24 of the CERC (Terms and Conditions of tariff) Regulations 2004 as amended or revised from time to time;

In case the Power Station and the Procurers being within the same state, the Unscheduled Interchange shall be regulated by the respective SERC regulations;

**“Unscheduled Outage”** shall mean an outage that is not a Scheduled Outage and is for the purpose of performing work on specific plant and equipments, which work could not be postponed till the next Scheduled Outage;

**“US \$” or “USD” or “Dollar” [for imported fuel only]** shall mean United States Dollars, the lawful currency of the United States of America;

**“Week”** shall mean a calendar week commencing from 00:00 hours of Monday, and ending at 24:00 hours of the following

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Sunday;

"Wheeling Charges" or "Transmission Charges" shall mean the charges to be paid by the Seller and reimbursed by the Procurers as transmission tariff for usage of intervening CTU networks for the transmission of power from the Injection Point up to the Delivery Point, as approved by the Appropriate Commission (excluding the charges for the STU network or charges of STU system operation or SLDC Charges, if any);

## 1.2 Interpretation

Save where the contrary is indicated, any reference in this Agreement to:

- 1.2.1 "Agreement" shall be construed as including a reference to its Schedules, Appendices and Annexures;
- 1.2.2 An "Article", a "Recital", a "Schedule" and a "paragraph / clause" shall be construed as a reference to an Article, a Recital, a Schedule and a paragraph/clause respectively of this Agreement;
- 1.2.3 A "crore" means a reference to ten million (10,000,000) and a "lakh" means a reference to one tenth of a million (1,00,000);
- 1.2.4 An "encumbrance" shall be construed as a reference to a mortgage, charge, pledge, lien or other encumbrance securing any obligation of any person or any other type of preferential arrangement (including, without limitation, title transfer and retention arrangements) having a similar effect;
- 1.2.5 "Indebtedness" shall be construed so as to include any obligation (whether incurred as principal or surety) for the payment or repayment of money, whether present or future, actual or contingent;
- 1.2.6 A "person" shall be construed as a reference to any person, firm, company, corporation, society, trust, government, state or agency of a state or any association or partnership (whether or not having separate legal personality) of two or more of the above and a person shall be construed as including a reference to its successors, permitted transferees and permitted assigns in accordance with their respective interests;
- 1.2.7 "Rupee", "Rupees" and "Rs." shall denote Indian Rupees, the lawful currency of India;
- 1.2.8 The "winding-up", "dissolution", "insolvency", or "reorganization" of a company or corporation shall be construed so as to include any equivalent or analogous proceedings under the Law of the jurisdiction in which such company or corporation is incorporated or any jurisdiction in which such company or corporation carries on business including the seeking of

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liquidation, winding-up, reorganization, dissolution, arrangement, protection or relief of debtors;

1.2.9 Words importing the singular shall include the plural and vice versa;

1.2.10 This Agreement itself or any other agreement or document shall be construed as a reference to this or to such other agreement or document as it may have been, or may from time to time be, amended, varied, novated, replaced or supplemented;

1.2.11 A Law shall be construed as a reference to such Law including its amendments or re-enactments from time to time;

1.2.12 A time of day shall, save as otherwise provided in any agreement or document be construed as a reference to Indian Standard Time;

1.2.13 Different parts of this Agreement are to be taken as mutually explanatory and supplementary to each other and if there is any inconsistency between or among the parts of this Agreement, they shall be interpreted in a harmonious manner so as to give effect to each part;

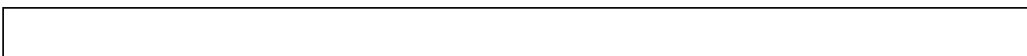
1.2.14 The tables of contents and any headings or sub-headings in this Agreement have been inserted for ease of reference only and shall not affect the interpretation of this Agreement;

1.2.15 All interest payable under this Agreement shall accrue from day to day and be calculated on the basis of a year of three hundred and sixty five (365) days;

1.2.16 The words "hereof" or "herein", if and when used in this Agreement shall mean a reference to this Agreement;

1.2.17 The terms "including" or "including without limitation" shall mean that any list of examples following such term shall in no way restrict or limit the generality of the word or provision in respect of which such examples are provided;

1.2.18 The contents of Schedule 10 shall be referred to for ascertaining accuracy and correctness of the representations made by the Successful Bidder / Seller in Clause 7.2.1(vi) of Schedule 7 hereof.



## 2 ARTICLE 2 : TERM OF AGREEMENT

### 2.1 Effective Date

2.1.1 This Agreement shall come into effect from the date it is executed and delivered by the last of all the Parties and such date shall be referred to as the Effective Date.

### 2.2 Term of Agreement

2.2.1 This Agreement shall be valid for a term commencing from the Effective Date until the Expiry Date ("Term of Agreement"), unless terminated earlier pursuant to Article 2.3. Upon the occurrence of the Expiry Date, this Agreement shall, subject to Article 2.4, automatically terminate, unless mutually, extended by all the Parties on mutually agreed terms and conditions, at least one hundred and eighty (180) days prior to the Expiry Date, subject to approval of the Rajasthan Electricity Regulatory Commission.

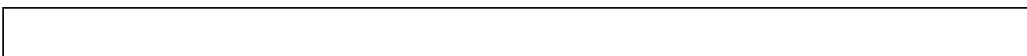
### 2.3 Early Termination

2.3.1 This Agreement shall terminate before the Expiry Date:

- i. if either all the Procurers (jointly) or the Seller exercises a right to terminate, pursuant to Articles 3.4.2, 3.4.3, 3.4.4, 3.4.5, 4.1.1, 11.3.4, 11.4.5, 11.5.1 or Clause 7.2.3 of Schedule 7 of this Agreement; or
- ii. in such other circumstances as the Seller and all the Procurers (jointly) may agree, in writing.

### 2.4 Survival

2.4.1 The expiry or termination of this Agreement shall not affect any accrued rights, obligations and liabilities of the Parties under this Agreement, including the right to receive liquidated damages as per the terms of this Agreement, nor shall it affect the survival of any continuing obligations for which this Agreement provides, either expressly or by necessary implication, which are to survive after the Expiry Date or termination including those under Article 3.4.2, Article 9 (Force Majeure), Article 11 (Events of Default and Termination), Article 12 (Liability and Indemnification), Article 14 (Governing Law and Dispute Resolution), Article 15 (Miscellaneous Provisions), and other Articles and Schedules of this Agreement which expressly or by their nature survive the Term or termination of this Agreement shall continue and survive any expiry or termination of this Agreement.



3 ARTICLE 3 : CONDITIONS SUBSEQUENT TO BE SATISFIED BY SELLER/ PROCURERS

3.1 Satisfaction of conditions subsequent by the Seller

3.1.1 The Seller agrees and undertakes to duly perform and complete the following activities at the Seller's own cost and risk within ten (10) months from the Effective Date, unless such completion is affected by any Force Majeure event or due to the Procurers' failure to comply with their obligations under Article 3.2.1 of this Agreement, or if any of the activities is specifically waived in writing by the Procurers (jointly):

- a) **The ..... *[Insert "Seller shall have executed the Fuel Supply Agreement and have provided the copy of the same to the Procurers" if Seller is NOT a Trading Licensee, or insert "Seller shall ensure that the Developer has executed the Fuel Supply Agreement and further ensure that a copy of the same is provided to the Procurers" if Seller is a Trading Licensee] [this condition shall not be included in case the generation source, chosen by the Seller is a captive coal-mine based thermal plant or a hydro-electric plant];***
- b) **In case the Power Station is located outside the state of the Procurers, the Seller shall have obtained all the necessary permission for the long term open access for the intrastate transmission system from the Power Station bus bar to the Injection Point (except in case of dedicated transmission lines) and shall have executed all necessary agreements for such transmission access and provided a copy of the same to the Procurers;**
- c) **The Seller shall have obtained the necessary permission for long term open access for the transmission system from the Injection Point up to the Delivery Point and have executed the Transmission Service Agreement with the transmission licensee for transmission of power from the Injection Point up to the Delivery Point and provided a copy of the same to the Procurers;**
- d) ***[Insert this condition for new plants] [Insert the following if Seller is NOT a Trading Licensee] "The Seller shall have acquired and taken the possession of the balance area of land out of the total land requirement as mentioned in the proposal filed before the competent authority at the RFP stage.;" [or insert if Seller is a Trading Licensee] "The Seller shall ensure that the Developer has acquired and taken the possession of the balance area of land out of the total land requirement as mentioned.***

The Seller shall submit the letter of possession and equivalent documents for such area of land as mentioned above to the Procurers.

- e) ***[Insert this condition for new plants] [Insert the following if Seller is NOT a Trading Licensee] "The Seller shall have awarded the Engineering, Procurement and Construction contract ("EPC contract) or main plant***

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contract for boiler, turbine and generator (“BTG”), for setting up of the Power Station and shall have given to such contractor an irrevocable NTP and shall have submitted a letter to this effect to the Procurer(s);” *or insert if Seller is a Trading Licensee, “The Seller shall ensure that the Developer shall have awarded the Engineering, Procurement and Construction contract (“EPC contract”) or main plant contract for boiler, turbine and generator (“BTG”), for setting up of the Power Station and shall have given to such contractor an irrevocable NTP and the Seller shall have submitted a letter to this effect to the Procurer(s);” ]*

*[Insert this condition for existing plants]* The Seller shall submit evidence of commissioning of the Power Station, including details of the Installed Capacity;

- f) The Seller shall have obtained all Consents, Clearances and Permits required for supply of power to the Procurers as per the terms of this Agreement. In case a Project Company is incorporated and the Consents, Clearances and Permits have been obtained in the name of a company other than the Project Company, all such Consents, Clearances and Permits shall have been transferred in the name of such Project Company;
- g) The Seller shall have sent a written notice to all the Procurers indicating the Aggregate Contracted Capacity and total Installed Capacity for each unit and for the Power Station as a whole expressed in MW;
- h) *[Insert this condition for new plants] [Insert the following if Seller is NOT a Trading Licensee, “The Seller shall have achieved Financial Closure and has provided a certificate from the lead banker to this effect;” or insert the following if Seller is a Trading Licensee, “The Seller shall ensure that the Developer shall have achieved Financial Closure and has provided a certificate from the lead banker to this effect;” ]*
- i) *[To be included if the Seller opts for substitution rights of the Lender(s)]* The Seller shall have provided an irrevocable letter to the Lenders duly accepting and acknowledging the rights provided to the Lenders under the terms of this Agreement and all other RFP Documents;

### **3.2** *Satisfaction of conditions subsequent by the Procurers*

3.2.1 The Procurers agree and undertake to duly perform and complete the following activities at the Procurers’ own cost and risk within six (6) Months from the Effective Date, unless such completion is affected by any Force Majeure event or due to the Seller’s failure to comply with their obligations under Article 3.1.1 of this Agreement or if any of the activities is specifically waived in writing by the Seller:

- a) **The Procurers shall facilitate the representation of the Seller in the relevant RPC forum in coordinating on applicable inter-state/regional transmission linkages required from the Injection Point to the Delivery Point.**

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- b) *[Insert this clause in case the Power Station is located within the state of the Procurer and STU network is to be used]* **The Procurers shall have obtained necessary transmission linkage for long term open access for the transmission system from the Power Station switchyard up to the Delivery Point and shall have executed the Transmission Service Agreement with the STU for transmission of power from the Power Station switchyard up to the Delivery Point and provided a copy of the same to the Seller. Further, the Procurers shall indicate in writing to the Seller, the voltage level at which supply of power is to be made to the Procurers.**
- c) **The Procurers shall have obtained the order of the Rajasthan Electricity Regulatory Commission for adoption of the tariff under Section 63 of the Electricity Act 2003 and given a copy of the same to the Seller.**

### 3.3 Joint responsibilities of the Procurers and the Seller

**3.3.1 *The Lead Procurer and the Seller shall have jointly agreed on the specific date(s) for commencement of supply of power and quantum of the Contracted Capacity to be supplied to Procurers from each such date. Such mutually agreed date(s) shall not be later than the Scheduled Delivery Date, and the total quantum of power shall be equal to the Aggregate Contracted Capacity.***

**3.3.2 *These date(s) shall be mutually agreed upon within ten (10) Months and shall be the Revised Scheduled Delivery Date(s) for the respective quantum of power.***

### 3.4 Consequences of non-fulfillment of conditions subsequent

**3.4.1** If any one or more of the conditions specified in Article 3.1 is not duly fulfilled by the Seller, even within “three (3) Months after the time specified under Article 3.1, otherwise than for the reasons directly attributable to the Procurers or Force Majeure event in terms of Article 3.4.3, then on and from the expiry of such period and until the Seller has satisfied all the conditions specified in Article 3.1, the Seller shall, on weekly basis, be liable to furnish to the Procurers additional Contract Performance Guarantee from any of the banks listed in Schedule 11 of this Agreement, of Rs. .... (.....) [Insert Amount not less than that derived on the basis of Rs. 1.50 lakhs per MW of Contracted Capacity], which has been provided separately to each of the Procurers for the amount calculated pro-rata (and rounded off to ..... [insert amount]) with the principle that amounts below Rupees ..... [insert amount] shall be rounded down and amounts of Rupees ..... [insert amount] and above shall be rounded up) in the ratio of Contracted Capacities”, within two (2) Business Days of expiry of every such Week. Such additional Contract Performance Guarantee shall

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initially be valid till the Scheduled Delivery Date, and the Procurers shall be entitled to hold and/ or invoke the Contract Performance Guarantee, including such additional Contract Performance Guarantee, in accordance with the provisions of this Agreement. However, upon satisfaction of the conditions subsequent by the Seller, the additional Contract Performance Guarantee shall be returned by the Procurers.

3.4.2 Subject to Article 3.4.3, if:

- (i) fulfillment of any one or more of the conditions specified in Article 3.1 is delayed beyond the period of three (3) Months after the date specified in Article 3.1 above, and the Seller fails to furnish the additional Contract Performance Guarantee to the Procurers in accordance with Article 3.4.1 hereof; or
- (ii) the Seller furnishes additional Contract Performance Guarantee to the Procurers in accordance with Article 3.4.1 hereof, but fails to fulfill the conditions specified in Article 3.1 for a period of six (6) Months beyond the period specified in Article 3.1 above,

*all the Procurers (jointly) or “the Seller”]* shall have the right to terminate this Agreement by giving a Termination Notice to the other Party in writing of at least seven (7) days. The termination of the Agreement shall take effect upon the expiry of the last date of the said notice period (“Termination Date”).

If the Procurers elect to terminate this Agreement in the event specified in the preceding paragraph of this Article, the Seller shall be liable to pay to the Procurer(s) on the Termination Date an amount of Rupees ..... (.....) [*Insert amount not less than that derived on the basis of Rs. 40.00 lakhs per MW of the Contracted Capacity*] only as liquidated damages.

The Procurers shall be entitled to recover this amount of liquidated damages on the Termination Date, by invoking the Contract Performance Guarantee and shall then return the balance Contract Performance Guarantee, if any, to the Seller. If the Procurers are unable to recover the amount of liquidated damages or any part thereof from the Contract Performance Guarantee, the amount of liquidated damages not recovered from the Contract Performance Guarantee, if any, shall be payable by the Seller to the Procurers within ten (10) days from the Termination Date.

For the avoidance of doubt, it is clarified that this Article shall survive the termination of this Agreement.

3.4.3 In case of inability of the Seller to fulfill any one or more of the conditions specified in Article 3.1 due to any Force Majeure event, the time period for fulfillment of the

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Conditions Subsequent as mentioned in Article 3.1, shall be extended for the period of such Force Majeure event, subject to a maximum extension period of ten (10) Months, continuous or non-continuous in aggregate. Thereafter, this Agreement may be terminated by either the Procurers (jointly), or the Seller by giving a Termination Notice of at least seven (7) days, in writing to the other Party. The termination of the Agreement shall take effect upon the expiry of the last date of the said notice period.

- 3.4.4 Similarly, in case of inability of the Procurers to fulfill the conditions specified in Article 3.2 due to any Force Majeure event, the time period for fulfillment of the condition subsequent as mentioned in Article 3.2, shall be extended for the period of such Force Majeure event, subject to a maximum extension period of ten (10) Months, continuous or non-continuous in aggregate. Thereafter, this Agreement may be terminated by either Procurers (jointly), or the Seller by giving a Termination Notice of at least seven (7) days, in writing to the other Party. The termination of the Agreement, shall take effect upon the expiry of the last date of the said notice period.
- 3.4.5 In case of inability of the Procurers to perform the activities specified in Article 3.2 within the time period specified therein, otherwise than for the reasons directly attributable to the Seller or Force Majeure event, the time period for the fulfillment of condition subsequent by the Procurers as mentioned in Article 3.2 would be extended for an additional time period which may be required by the Procurers to complete the activities mentioned in Article 3.2, subject to a maximum additional time period of three (3) months. Thereafter, this Agreement may be terminated by the Seller at its option, by giving a Termination Notice of at least seven (7) days, in writing to the Procurers. If the Seller elects to terminate this Agreement, the Procurers shall, within a period of thirty (30) days of termination by the Seller, release the Contract Performance Guarantee of the Seller forthwith. In addition, the Procurers shall pay to the Seller as liquidated damages, a sum equivalent to ten percent (10%) of the value of the Contract Performance Guarantee.
- 3.4.6 No Tariff adjustment shall be allowed on account of any extension of time arising under any of the sub-articles of Article 3.4;

Provided that due to the provisions of Articles 3.4.3, 3.4.4 and 3.4.5, any increase in the time period for completion of conditions subsequent mentioned under Article 3.1, shall also lead to an equal extension in the Scheduled Delivery Date or the Revised Scheduled Delivery Date, as the case may be.

### **3.5 [Contract Performance Guarantee](#)**

- 3.5.1 The Performance Guarantee furnished under this Agreement shall be for guaranteeing the commencement and continuity of the supply of power up to the Contracted Capacity within the time specified in this Agreement.
- 3.5.2 The failure on the part of the Seller to furnish and maintain the Contract Performance Guarantee shall be a material breach of the term of this Agreement on the part of the Seller.
- 3.5.3 If the Seller fails to commence supply of power on the respective Revised Scheduled Delivery Date(s) or the Scheduled Delivery Date specified in this Agreement, subject to

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conditions mentioned in Article 4.7.1, the Procurers jointly shall have the right to encash the Contract Performance Guarantee and appropriate in their favour as liquidated damages an amount specified in Article 4.8.1, without prejudice to the other rights of the Procurers under this Agreement.

### **3.6 Reduction in the amount of Contract Performance Guarantee**

3.6.1 On successful supply of power as per the terms of this Agreement for a duration of five (5) years from the Delivery Date and provided that there has been no Seller Event of Default in the immediately preceding thirty-six (36) Months, the value of the Contract Performance Guarantee shall be reduced by an aggregate amount of Rupees ..... [Insert amount calculated at Rs. 15 lakhs / MW of the Contracted Capacity]. The Seller shall thereafter provide such reduced Contract Performance Guarantee separately to each of the Procurers for the amount calculated pro-rata (and rounded off to ..... [insert amount]) with the principle that amounts below Rupees ..... [insert amount] shall be rounded down and amounts of Rupees ..... [insert amount] and above shall be rounded up) in the ratio of Contracted Capacities”, in lieu of the Contract Performance Guarantee, of an amount of Rupees ..... (.....) [Insert amount calculated at Rs. 30 lakhs per MW of the Contracted Capacity]. Such reduced Contract Performance Guarantee shall be initially valid for a period, which is the lower of five (5) years or the balance Term of this Agreement.

### **3.7 Renewal of Contract Performance Guarantee**

- 3.7.1 The Seller shall ensure the renewal of the Contract Performance Guarantee before a date, which is thirty (30) days prior to the expiry of the then existing validity of the Contract Performance Guarantee.
- 3.7.2 Such renewed Contract Performance Guarantee shall be initially valid for a period which is the lower of five (5) years or the balance Term of this Agreement.
- 3.7.3 If such extended Contract Performance Guarantee is not received as per the date specified above, the Procurer(s) shall have the right to encash the then existing Contract Performance Guarantee.

### **3.8 Return of Contract Performance Guarantee**

- 3.8.1 The Procurers shall return / release the Contract Performance Guarantee in the event of (i) applicability of Article 3.4.2 to the extent the Contract Performance Guarantee is valid for an amount in excess of Rupees ..... (.....) [Insert amount not less than that derived on the basis of 40.00 lakhs per MW of the Contracted Capacity], or (ii) termination of this Agreement by any Party under Article 3.4.3, 3.4.4 or Article 3.4.5 of this Agreement.
- 3.8.2 Subject to the provisions of Article 3.8.1, the Procurers shall return / release the Contract Performance Guarantee to the Seller at the end of the Term of this Agreement.
- 3.8.3 The return / release of the Contract Performance Guarantee shall be without prejudice to other rights of the Procurers under this Agreement.





4 ARTICLE 4 : SUPPLY OF POWER

4.1 Commencement of Supply of Power to Procurers

4.1.1 The Seller shall be responsible to commence supply of power up to the Aggregated Contracted Capacity by the Scheduled Delivery Date in accordance with the provisions of this Agreement, which is ..... *[insert the date specified by the Procurer / Authorized Representative in the RFP]*. However, the Seller and the Procurers may mutually agree for commencement of supply of power in a phased manner from the Revised Scheduled Delivery Date(s) as specified in Article 3.3 of this Agreement.

4.1.2 The Seller shall give the Procurers and the concerned RLDC at least sixty (60) days advance preliminary written notice and at least thirty (30) days advance final written notice, of the date on which it intends to commence supply of power.

4.2 Seller’s Obligations

4.2.1 Subject to the terms and conditions of this Agreement, the Seller undertakes to be responsible, at Seller’s own cost and risk, for:

- a) **obtaining all Consents, Clearances and Permits other than those obtained under Article 3.1.1 and maintaining all Consents, Clearances and Permits in full force and effect during the Term of this Agreement; [Insert further in case Seller is a Trading Licensee; “The Seller shall further ensure that the Developer maintains all Consents, Clearances and Permits in full force and effects during the Term of this Agreement”]**
- b) **the commencement of supply of power, up to the Aggregated Contracted Capacity, to the Procurers no later than the Scheduled Delivery Date or the Revised Scheduled Delivery Date(s), as the case may be, such that as much of the Contracted Capacity as can be made available through the use of Prudent Utility Practices will be made available reliably to meet the Procurers’ scheduling and dispatch requirements throughout the Term of this Agreement;**
- c) **obtaining all the necessary permissions for the long term open access for the intrastate transmission system for evacuation of power from the Power Station bus bar to the Injection Point (except in case of dedicated transmission lines) and excute all necessary agreements for such transmission access and provide a copy of the same to the Procurers;**
- d) **obtaining open access for transmission of Aggregated Contracted Capacity of power from the Injection Point to the Delivery Point;**
- e) ***[Insert the following if Seller is NOT a Trading Licensee: “Owning the Power Station throughout the Term of this Agreement free and clear of encumbrances, except those expressly permitted under Article 13” or insert the following if Seller is a Trading Licensee: “Ensuring that the Power Station is owned by the Developer throughout the Term of this***



Agreement free and clear of encumbrances, except those expressly permitted by the Seller through the power purchase agreement between the Seller and Developer”];

- f) *[Insert the following if Seller is NOT a Trading Licensee: “Procuring electricity at the Power Station (including construction, commissioning and start-up power) and to comply in a timely manner all formalities for getting such a supply of electricity” or insert the following if Seller is a Trading Licensee: “ensuring that the Developer of the Power Station procures electricity at the Power Station (including construction, commissioning and start-up power) and complies in a timely manner all formalities for getting such a supply of electricity”];*
- g) providing on a timely basis, all relevant information to the Procurers which may be required for receiving power at the Delivery Point; and
- h) fulfilling all obligations undertaken by the Seller under this Agreement.

### 4.3 Procurers’ Obligations

4.3.1 Subject to the terms and conditions of this Agreement, the Procurers shall:

- a) ensure the availability of Interconnection Facilities and evacuation of power from the Delivery Point before the Scheduled Delivery Date or the Revised Scheduled Delivery Date, as the case may be;
- b) be responsible for payment of the Transmission Charges (from the Injection Point onwards) and applicable RLDC / SLDC charges, limited to the charges applicable to the Contracted Capacity of Procurers. The Procurers shall reimburse any of the above charges, if paid by the Seller;
- c) be responsible for obtaining open access for transmission of their respective Contracted Capacity from the Injection Point to their respective Delivery Point
- d) *[Insert this clause where the Procurer(s) is responsible to arrange for obtaining transmission linkage from the Power Station switchyard in case the Power Station is located within the state of the Procurer(s)]* be responsible for making arrangements for evacuation of their respective Contracted Capacity from the Power Station switchyard to their respective Delivery Point.
- e) make all reasonable arrangements for the evacuation of the Infirm Power from the Power Station; subject to the availability of transmission capacity; and
- f) fulfill all obligations undertaken by the Procurers under this Agreement.

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## 4.4 Purchase and sale of Available Capacity and Scheduled Energy

- 4.4.1 Subject to the terms and conditions of this Agreement, the Seller undertakes to sell to the Procurers, and the Procurers undertake to pay Tariff for all of the Available Capacity up to the Contracted Capacity and corresponding Scheduled Energy.
- 4.4.2 Unless otherwise instructed by all the Procurers (jointly), the Seller shall sell all the Available Capacity to each Procurer in proportion of each Procurer's then existing Contracted Capacity pursuant to Dispatch Instructions of such Procurer.

## 4.5 Right to Contracted Capacity and Scheduled Energy

- 4.5.1 Subject to provisions of this Agreement, the entire Aggregate Contracted Capacity shall be for the exclusive benefit of the Procurers and the Procurers shall have the exclusive right to purchase the entire Aggregate Contracted Capacity from the Seller. The Seller shall not grant to any third party or allow any third party to obtain any entitlement to the Contracted Capacity and/or Scheduled Energy..
- 4.5.2 a ) Notwithstanding Article 4.5.1, the Seller is free to sell such power to any third party prior to the Scheduled Delivery Date or Revised Scheduled Delivery Date(s) as the case may be and any capacity which is in excess of the quantum of power agreed to be supplied under this Agreement from each such Revised Scheduled Delivery Date(s).
- b) Further notwithstanding Article 4.5.1, the Seller shall be permitted to sell power, being a part of the Contracted Capacity to third parties, if:
- i) **there is a part of Available Capacity corresponding to the Contracted Capacity which has not been Dispatched by the Procurer, ordinarily entitled to receive such part ('Concerned Procurer');** and
  - ii) **such part has first been offered, at the same Tariff, to the other Procurers (by the Seller), who were not ordinarily entitled to receive such part and they have chosen to waive or not to exercise their first right to receive such part of the Available Capacity within two (2) hours of being so offered the opportunity to receive such part subject to the provisions regarding scheduling as per IEGC.**
- 4.5.3 If a Procurer does not avail of power up to the Available Capacity provided by the Seller corresponding to such Procurer's Contracted Capacity, and the provisions of Article 4.5.2 (b) have been complied with, the Seller shall be entitled to sell such Available Capacity not scheduled by the Procurers, to any person without losing the right to receive the Capacity Charges from the Concerned Procurer for such unavailed Available Capacity. In such a case, the sale realization in excess of Energy Charges, shall be equally shared by the Seller with the Concerned Procurer. In the event, the Seller sells such Available Capacity to any direct or indirect Affiliate of the Seller/ shareholders of the Seller without obtaining the prior written consent of the Procurer, the Seller shall be liable to sell such Available Capacity to such entity at Tariffs being not less than the Tariff payable by the Concerned Procurer whose capacity is being sold pursuant to this Article. If more than

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one Procurers do not avail of the Available Capacity corresponding to their Contracted Capacity, provisions of this Article shall be applicable to them mutatis mutandis and in such case, fifty percent (50%) of the excess over Energy Charges recovered by the Seller from sale to third party shall be retained by the Seller and the balance fifty percent (50%) shall be provided by the Seller to the Concerned Procurer(s) in the ratio of their Available Capacity not dispatched by such Concerned Procurer(s) and sold by the Seller to third parties. During this period, the Seller will also continue to receive the Capacity Charges from such Procurers.

- 4.5.4 The sale under Unscheduled Interchange shall not be considered as sale to third party for the purposes of this Agreement.
- 4.5.5 Upon the Procurers or any Procurer who has not availed of the Available Capacity, as envisaged under this Article, intimating to the Seller of its intention and willingness to avail of the part or whole of the Available Capacity corresponding to the Contracted Capacity not availed of and therefore sold to the third party, the Seller shall, notwithstanding anything contained in the arrangement between the Seller and any third party, commence supply of such capacity to the Concerned Procurers from the later of two (2) hours from receipt of notice in this regard from the Concerned Procurers or the time for commencement of supply specified in such notice subject to the provisions regarding scheduling as per IEGC.

## 4.6 Alternative Source of Power Supply

- 4.6.1 During the Operating Period, if the Seller is unable to provide supply of power to the Procurers up to the Aggregate Contracted Capacity from the Power Station except due to a Force Majeure Event or due to a Procurer Event of Default, the Seller is free to supply power up to the Aggregate Contracted Capacity from an alternative generation source to meet its obligations under this Agreement. Such power shall be supplied to the Procurers at the same Tariff as per the terms of this Agreement and subject to provisions of Article 4.6.2. In case the transmission and other incidental charges, including but not limited to application fees for open access, RLDC/SLDC charges, etc., applicable from the alternative source of power supply are higher than the applicable Transmission Charges from the Injection Point to the Delivery Point, the Seller would be liable to bear such additional charges.
- 4.6.2 The Seller shall be permitted to supply power to the Procurers from any alternative source for a maximum continuous duration of six (6) Months or a maximum non continuous period of twelve (12) months during the Operating Period, excluding any period of supply from alternative generation source that the Seller avails prior to the commencement of supply from the generation source named in this Agreement as provided for in Article 4.8.

## 4.7 Extensions of Time

- 4.7.1 In the event that the Seller is prevented from performing its obligations under Article 4.1.1 by the Revised Scheduled Delivery Date(s) or the Scheduled Delivery Date, as the case may be, due to:
- a) **any Procurer Event of Default; or**

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b) **Force Majeure Events affecting the Procurer(s), or**

c) **Force Majeure Events affecting the Seller,**

the Revised Scheduled Delivery Date(s), Scheduled Delivery Date and the Expiry Date shall be deferred, subject to the limit prescribed in Article 4.7.2, for a reasonable period but not less than 'day for day' basis, to permit the Seller or the Procurer(s) through the use of due diligence, to overcome the effects of the Force Majeure Events affecting the Seller or the Procurer(s), or till such time such Event of Default is rectified by the Procurer(s).

4.7.2 In case of extension occurring due to reasons specified in Article 4.7.1(a), any of the dates specified therein can be extended, subject to the condition that the Scheduled Delivery Date would not be extended by more than twelve (12) Months or the date on which the Seller elects to terminate this Agreement, whichever is later.

4.7.3 In case of extension due to reasons specified in Article 4.7.1(b) and (c), and if such Force Majeure Event continues even after the maximum period of twelve (12) Months, any of the Parties may choose to terminate the Agreement as per the provisions of Article 11.5.

4.7.4 If the Parties have not agreed, within thirty (30) days after the affected Party's performance has ceased to be affected by the relevant circumstance, on the time period by which the Revised Scheduled Delivery Date(s), Scheduled Delivery Date or the Expiry Date should be deferred by, any Party may raise the Dispute to be resolved in accordance with Article 14.

4.7.5 As a result of such extension, the Scheduled Delivery Date and the Expiry Date newly determined shall be deemed to be the Scheduled Delivery Date and the Expiry Date for the purposes of this Agreement.

## **4.8 Liquidated Damages for delay in commencement of supply of power to Procurers**

4.8.1 If the Seller is unable to commence supply of power to the Procurers by the Scheduled Delivery Date or the Revised Scheduled Delivery Date, as the case may be, other than for the reasons specified in Article 4.7.1, the Seller shall pay to each Procurer liquidated damages as per this Article 4.8.1, proportionate to the then existing Contracted Capacity, for the delay in such commencement of supply of power and making the Contracted Capacity available for dispatch by the Scheduled Delivery Date or the Revised Scheduled Delivery Date, as the case may be.

Provided that the Seller shall have the option to supply power from any alternative generation source from the Scheduled Delivery Date or the Revised Scheduled Delivery Date, as the case may be, for a continuous period not exceeding twelve (12) months at the same Tariff as per the terms of this Agreement. Provided further that the cumulative Availability from such alternative generation source in the twelve (12) months period

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shall not be less than the Normative Availability. If the Seller fails to commence such supply of power or fails to achieve the required Availability as mentioned above in this para, it shall pay to the Procurers liquidated damages as per this Article 4.8.1.

In case the transmission and other incidental charges, including but not limited to application fees for open access, RLDC/SLDC charges, etc., applicable from the alternative source of power supply are higher than the applicable Transmission Charges from the Injection Point to the Delivery Point, the Seller would be liable to bear such additional charges.

The sum total of the liquidated damages payable by the Seller to the Procurers shall be calculated as follows:

$$\text{SLDb} = [\text{CC} * \text{d} * \text{DR1}], \quad \text{if } \text{d} \leq 60$$

$$\text{SLDb} = [\text{CC} * 60 * \text{DR1}] + [\text{CC} * (\text{d} - 60) * \text{DR2}], \quad \text{if } \text{d} > 60$$

where:

- a) **“SLDb” are the liquidated damages payable by the Seller during the period beginning with the day from the Scheduled Delivery Date or the Revised Scheduled Delivery Date or from the end of continuous period of supply from the alternative generation source or for the period during which the Availability from the alternative generating source is less than the Normative Availability, as the case may be, up to and including the day on which supply of power to the Procurers actually commences from the generation source as provided in this Agreement;**
- b) **“CC” is the Contracted Capacity;**
- c) **“d” is the number of days in the period beginning with the day after the Scheduled Delivery Date or the Revised Scheduled Delivery Date or from the end of continuous period of supply from the alternative generation source or for the period during which the Availability from the alternative generating source is less than the Normative Availability, as the case may be, up to and including the day on which supply of power to the Procurers actually commences from the generation source as provided in this Agreement;**
- d) **“DR1” is Rs. Ten Thousand (10,000) of damages per MW per day of delay in case “d” is equal to or less than 60 days and “DR2” is Rs. Fifteen Thousand (15,000) of damages per MW per day of delay in case “d” is more than 60 days.**

4.8.2 The Seller’s maximum liability under this Article 4.8 shall be limited to the amount of liquidated damages calculated in accordance with Article 4.8.1 for and up to twelve (12) Months of delay for commencement of supply of power from the Scheduled Delivery Date or the Revised Scheduled Delivery Date, as the case may be.

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Provided that in case of failure of the Seller to start supply of power to Procurers even after expiry of twelve (12) Months from its Scheduled Delivery Date or the Revised Scheduled Delivery Date, as the case may be, it shall be considered as a Seller Event of Default and provisions of Article 11 shall apply.

4.8.3 The Seller shall pay the amount calculated pursuant to Article 4.8.1 to the Procurers within ten (10) days of the earlier of:

a) **the date on which the Seller commences supply of power to the Procurers, or**

b) **expiry of the twelve (12) Months period mentioned in Article 4.8.2.**

4.8.4 If the Seller fails to pay the amount of liquidated damages within the period of ten (10) days as specified in Article 4.8.3, the Procurers shall be entitled to recover the said amount of the liquidated damages by invoking the Contract Performance Guarantee. If the then existing Contract Performance Guarantee is for an amount which is less than the amount of the liquidated damages payable by the Seller to the Procurers under this Article 4.8, then the Seller shall be liable to forthwith pay the balance amount within ten (10) days of the invocation of the Contract Performance Guarantee by the Procurers.

4.8.5 The Parties agree that the formula specified in Article 4.8.1 for calculation of liquidated damages payable by the Seller under this Article 4.8, read with Article 11 is a genuine and accurate pre-estimation of the actual loss that will be suffered by the Procurers in the event of Seller's delay in starting supply of power by the Scheduled Delivery Date or the Revised Scheduled Delivery Date, as the case may be.

#### **4.9 *Liquidated Damages for delay due to Procurer Event of Default or Indirect Non Natural Force Majeure Events or Natural Force Majeure Event (affecting the Procurer)***

4.9.1 If the Seller is otherwise ready to commence supply of power and has given due notice, as per provisions of Article 4.1.2, to the Procurers of the date of commencement of power supply, where such date is on or before the Scheduled Delivery Date or Revised Scheduled Delivery Date, as the case may be, but is not able to commence supply of power by the said date specified in the notice, due to a Procurer Event of Default or due to Indirect Non Natural Force Majeure Event or (Natural Force Majeure Event affecting the Procurer) provided such Indirect Non Natural Force Majeure Event or (Natural Force Majeure Event affecting the Procurers) has continued for a period of more than three (3) continuous or non-continuous Months, the Seller shall, until the effects of the Procurer Event of Default or of Indirect Non Natural Force Majeure Event or (Natural Force Majeure Event affecting the Procurers) no longer prevent the Seller from providing supply of power to the Procurers, be deemed to have an Available Capacity equal to the Aggregated Contracted Capacity relevant to that date and to this extent, be deemed to have been providing supply of power with effect from the date notified, and shall be treated as follows:

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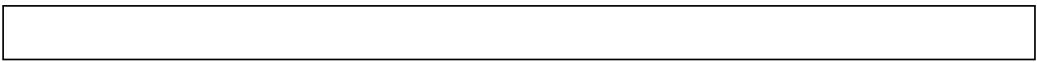
- a) In case of delay on account of the Procurer Event of Default, the Procurers shall make payment to the Seller of Capacity Charges in proportion to their Contracted Capacity, calculated on Normative Availability of Contracted Capacity for and during the period of such delay.
- b) *[Insert this para only in case Seller is not a Trading Licensee]* In case of delay due to Indirect Non Natural Force Majeure Event or (Natural Force Majeure Event affecting the Procurers), the Procurers shall make payment to the Seller for Debt Service, subject to a maximum of Capacity Charges calculated on Normative Availability of Contracted Capacity, which is due under the Financing Agreements for the period of such events in excess of three (3) continuous or non-continuous Months.
- c) In case of delay due to Indirect Non Natural Force Majeure Event (or Natural Force Majeure Event affecting the Procurers) or Procurer Event of Default, the Procurers shall be liable to make payments mentioned in (a) and (b) above, after commencement of supply of power, in the form of an increase in Capacity Charges. These amounts shall be paid from the date, being the later of a) the date of cessation of such Indirect Non Natural Force Majeure Event (or Natural Force Majeure Event affecting the Procurers) or Procurer Event of Default and b) *[Insert this line only in case Seller is not a Trading Licensee]* the completion of sixty (60) days from the receipt of the Financing Agreements by the Procurers from the Seller.

Provided such increase in Capacity Charges shall be determined by Appropriate Commission on the basis of putting the Seller in the same economic position as the Seller would have been in case the Seller had been paid amounts mentioned in (b) above in a situation where the Force Majeure Event or Procurer Event of Default had not occurred.

For the avoidance of doubt, it is specified that the charges payable under this Article 4.9.1 shall be paid by the Procurers in proportion to their then Contracted Capacity.

#### **4.10 Liquidated Damages for delay due to Direct Non Natural Force Majeure Event**

- 4.10.1 If the Seller is otherwise ready to commence supply of power and has given due notice, as per provisions of Article 4.1.2, to the Procurers of the date of commencement of power supply, where such date is on or before the Scheduled Delivery Date or Revised Scheduled Delivery Date, as the case may be, but is not able to commence supply of power by the said date specified in the notice, due to a Direct Non Natural Force Majeure Event, provided such Direct Non Natural Force Majeure Event has continued for a period of more than three (3) continuous or non-continuous Months, the Seller shall, until the effects of the Direct Non Natural Force Majeure Event no longer prevent the Seller from providing supply of power to the Procurer, be deemed to have an Available Capacity equal to the Contracted Capacity relevant to that date and to this extent, be deemed to





have been providing supply of power with effect from the date notified, and shall be treated as follows:

- a) ***[Insert this para only in case Seller is not a Trading Licensee]*** In case of delay due to Direct Non Natural Force Majeure not attributable to the Procurers, the Procurers shall make payment for Debt Service, subject to a maximum of Capacity Charges calculated on Normative Availability of Contracted Capacity which are due under the Financing Agreements for the period of such events in excess of three (3) continuous or non-continuous Months.
- b) In case of delay due to Direct Non Natural Force Majeure attributable to the Procurers, the Procurers shall make payment to the Seller of Capacity Charges calculated on Normative Availability of Contracted Capacity for the period of such events in excess of three (3) continuous or non-continuous Months.
- c) In case of delay due to Direct Non Natural Force Majeure Event, the Procurers shall be liable to make payments mentioned in (a) and (b) above, after commencement of supply of power, in the form of an increase in Capacity Charges. These amounts shall be paid from the date, being the later of a) the date of cessation of such Direct Non Natural Force Majeure Event and b) *[Insert this line only in case Seller is not a Trading Licensee]*the completion of sixty (60) days from the receipt of the Financing Agreements by the Procurers from the Seller.

**Provided such increase in Capacity Charges shall be determined by Appropriate Commission on the basis of putting the Seller in the same economic position as the Seller would have been in case the Seller had been paid amounts mentioned in (a) and (b) above in a situation where the Force Majeure Event had not occurred.**

**For the avoidance of doubt, it is specified that the charges payable under this Article 4.10.1 shall be paid by the Procurers in proportion to their then Contracted Capacity.**

**4.11** In every case referred to in Article 4.9.1 and 4.10.1 hereinabove, the Seller shall undertake to commence supply of the Contracted Capacity, relevant to such date, to the Procurers as soon as reasonably practicable [and in no event later than two (2) Weeks or such longer period as mutually agreed between the Seller and the Procurers (jointly) after the point at which it is no longer prevented from doing so by the effects of Force Majeure Events or Procurer Event of Default (as applicable). If the Seller is unable to provide supply of the Contracted Capacity in such a situation, then:

- a) **the Seller shall repay to the Procurers, all sums received by way of Capacity Charge for the deemed supply of power with interest at the same rate as Late Payment Surcharge; and**
- b) **If the Seller fails to provide supply of power to Procurers by the Scheduled Delivery Date or the Revised Scheduled Delivery Date, as the**

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**case may be, it shall also pay liquidated damages to the Procurers calculated in accordance with Article 4.8.**

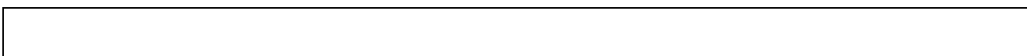
#### **4.12 Limit on amounts payable due to default**

4.12.1 The Parties expressly agree that the Procurers' only liability for any loss of profits or any other loss of any other kind or description whatsoever (except claims for indemnity under Article 12), suffered by the Seller by reason of the Procurers' failure to meet its obligations under Article 4.3.1 shall be to pay the Seller the amounts specified in Article 4.9 and Article 11.

4.12.2 Similarly, Seller's only liability for any loss suffered by the Procurers of any kind or description whatsoever (except claims for indemnity under Article 12), by reason of the Seller's failure to meet its obligation of providing supply of power on the Scheduled Delivery Date or Revised Scheduled Delivery Date(s), as the case may be, shall be as per Article 4.8 and Article 11.

#### **4.13 Transmission Losses**

4.13.1 Transmission losses from the Interconnection Point onwards would be borne by the Procurers, and power lost on account of transmission loss would be to the account of the Procurers.



**5**     **ARTICLE 5: CAPACITY, AVAILABILITY AND DISPATCH**

**5.1**   **Obligation to Supply the Contracted Capacity**

5.1.1   Notwithstanding any Scheduled Outage or Unscheduled Outage of the generating unit(s) and /or of the transmission system, the Seller shall offer for sale the Contracted Capacity to the Procurers at the Interconnection Point and arrange for transmission up to the Injection Point.

**5.2**   **Allocation of Generation Capacity**

5.2.1   The Seller shall provide ..... percent (.....%) [*Insert number*] of the Power Station’s Net Capacity to the Procurers as per the terms of this Agreement.

**5.3**   **Availability**

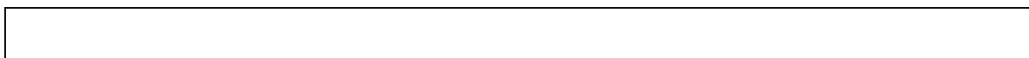
5.3.1   The ..... [*Insert “Seller” if Seller is NOT a Trading Licensee, or insert “Seller shall be responsible to ensure that the Developer” if Seller is a Trading Licensee*] shall comply/complies with the provisions of the applicable Law regarding Availability including, in particular, to the provisions of the ABT and Grid Code relating to declaration of Availability and the matters incidental thereto.

5.3.2   In case the Aggregate Contracted Capacity is a part of the Power Station’s Net Capacity; in the event of declared capacity being less than the sum total of all contracted capacities of the Power Station having duration of contracts in excess of one year, the available capacity to the Procurers for dispatch shall be reduced proportionately. However if the declared capacity exceeds the sum total of all contracted capacities of the Power Station having duration of contracts in excess of one year, the excess capacity will be at the disposal of the Seller.

**5.4**   **Scheduling and Dispatch**

5.4.1   The ..... [*Insert “Seller” if Seller is NOT a Trading Licensee, or “Seller shall be responsible to ensure that the Developer” if Seller is a Trading Licensee*] shall comply/complies with the provisions of the applicable Law regarding Dispatch Instructions, in particular, to the provisions of the ABT and Grid Code relating to scheduling and Dispatch and the matters incidental thereto.

5.4.2   The Seller further agrees that the Availability entitlement of the Procurers for dispatch over any Settlement Period cannot be offered to any third party other than for conditions under Articles 4.5.2. If the ..... [*Insert “Seller” if Seller is NOT a Trading Licensee, or “Seller or Developer” if Seller is a Trading Licensee*] willfully offers the power meant for dispatch to the Procurers to any third party without complying with the conditions specified in Article 4.5.2, the ..... [*Insert “Seller” if Seller is NOT a Trading Licensee, or “the Seller and Developer” if Seller is a Trading Licensee*] agrees to and acknowledges the Procurers’ right to instruct the RLDC / SLDC, as the case may be, not to schedule such power to any third party, after due approval from the Appropriate Commission.



## 5.5 Demonstration of Power Station's Net Capacity

- 5.5.1 The Procurers (*jointly*) may from time to time during the Operating Period, but only if the Available Capacity with respect to the Procurers has not been one hundred percent (100%) of the Aggregate Contracted Capacity even for one continuous period of at least three (3) hours during any last three (3) continuous months, request the relevant Control Centre to assess the Power Station's Net Capacity. Such capacity assessment of the Power Station, by the Control Centre at the request of the Procurers, shall not be done more than once in a continuous period of six (6) Months.
- 5.5.2 If the Power Station's Net Capacity after such capacity assessment is determined to be less than the sum total of all contracted capacities of the Power Station having duration of contracts in excess of one year, then the provisions of Article 5.6.1 shall apply and the ..... *[Insert "Seller" if Seller is NOT a Trading Licensee, or "Seller or Developer" if Seller is a Trading Licensee]* shall have a right to demonstrate to the satisfaction of the Control Centre the Power Station's Net Capacity only after a period of six (6) Months from the date of such assessment..
- 5.5.3 If the ..... *[Insert "Seller" if Seller is NOT a Trading Licensee, or "Developer" if Seller is a Trading Licensee]* wishes to take any unit of the Power Station or the Power Station, out of service for repair before any assessment by the Control Centre, it shall inform the Control Centre in writing before its scheduled start of the repairs and the estimated time required to complete the repairs. The Parties shall then schedule a maintenance outage in accordance with the Grid Code to enable the Seller to carry out those repairs and in such a case, the Procurers requiring the Control Centre to conduct the assessment, shall defer such assessment until such unit or the Power Station is returned to service following that maintenance outage.

## 5.6 Derating

- 5.6.1 Based on the assessment carried out by the Control Centre, if the Power Station's Assessed Capacity is less than the sum total of all contracted capacities of the Power Station having duration of contracts in excess of one year, the ..... *[Insert "Seller" if Seller is NOT a Trading Licensee, or "Developer" if Seller is a Trading Licensee]* shall not be permitted to declare the Available Capacity of the Power Station at a level greater than its Assessed Capacity, in which case:
- a) **The Power Station's Net Capacity shall be reduced to its most recent Assessed Capacity and Quoted Capacity Charges for the Aggregate Contracted Capacity shall be paid with respect to such reduced Power Station's Net Capacity until the next assessment by the concerned Control Centre.**
  - b) **Further, the Quoted Non-Escalable Capacity Charge shall be reduced by the following:**

**Rs. 0.25/kwh x [1 – (Assessed Capacity of the Power Station)/Power Station's Net Capacity];**

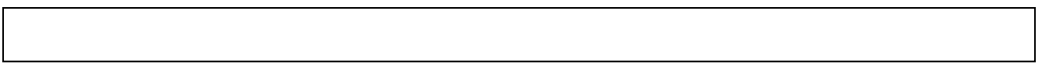
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c) **the Aggregate Contracted Capacity of the Procurers shall be reduced proportionately, and the Availability Factor shall be calculated by reference to the reduced Aggregate Contracted Capacity, in each case with effect from date on which all the Procurer(s) jointly first requested the Control Centre to assess the Power Station's Net Capacity.**

d) ***[Insert only in case when Seller is not a Trading Licensee]*the Capital Cost and each element of the Capital Structure Schedule shall be reduced in proportion to the reduction in the Aggregate Contracted Capacity as a result of that derating.**

5.6.2 If at the end of subsequent demonstration of the Power Station's Net Capacity by the Seller at the end of the six Month period referred to in Article 5.5.2, the Assessed Capacity comes out to be still less than the sum total of all contracted capacities of the Power Station having duration of contracts in excess of one year, the consequences mentioned in Article 5.6.1 shall apply on such Assessed Capacity for a period of at least one year from such date of demonstration of the Power Station's Net Capacity after which the Seller shall once again have the right to demonstrate the Power Station's Net Capacity. The consequences mentioned in Article 5.6.1 shall be modified based on the most recent Assessed Capacity of the Power Station.

5.6.3 If the Control Centre is unable to assess the Power Station's Net Capacity because of events or circumstances beyond the ..... *[Insert "Seller's" if Seller is NOT a Trading Licensee, or "Developer's" if Seller is a Trading Licensee]* reasonable control, the Control Centre shall reschedule an assessment as soon as reasonably practicable.



**6**     *ARTICLE 6: METERING*

**6.1**   Meters

6.1.1   For installation of Meters, Meter testing, Meter calibration and Meter reading and all matters incidental thereto, the Seller and the Procurers shall follow and be bound by the Central Electricity Authority (Installation and Operation of Meters) Regulations, 2006, the Grid Code and ABT as amended and revised from time to time.



**7**     **ARTICLE 7: INSURANCES**

**7.1**   **Insurance**

7.1.1   The ..... [*Insert “Seller” in case Seller is not a Trading Licensee or “Seller shall ensure that Developer” in case Seller is a Trading Licensee*] shall effect and maintain or cause to be effected and maintained during and before the Operating Period, Insurances against such risks, with such deductibles and with such endorsements and co-insured(s), which the Prudent Utility Practices would ordinarily merit maintenance of and as required under the Financing Agreements.

**7.2**   **Application of Insurance Proceeds**

7.2.1   Save as expressly provided in this Agreement or the Insurances, the proceeds of any insurance claim made due to loss or damage to the Power Station or any part of the Power Station shall be first applied to reinstatement, replacement or renewal of such loss or damage.

7.2.2   If a Natural Force Majeure Event renders the Power Station no longer economically and technically viable and the insurers under the Insurances make payment on a “total loss” or equivalent basis, the Procurers shall have no claim on such proceeds of such Insurance.

**7.3**   **Effect on liability of the Procurers**

7.3.1   Notwithstanding any liability or obligation that may arise under this Agreement, any loss, damage, liability, payment, obligation or expense which is insured or for which the ..... [*Insert “Seller” if Seller is NOT a Trading Licensee, or “Seller and Developer” if Seller is a Trading Licensee*] can claim compensation, under any Insurance shall not be charged to or payable by the Procurers.



## 8 ARTICLE 8: BILLING AND PAYMENT

### 8.1 General

8.1.1 From the commencement of supply of power, Procurers shall pay the Seller the monthly Tariff Payment, on or before the Due Date, comprising of Tariff for every Contract Year, determined in accordance with this Article 8 and Schedule 4. All Tariff Payments by the Procurers shall be in Indian Rupees.

Provided however, if the Procurers avails of any Infirm Power from the Power Station, then Procurers shall be liable to pay only Energy Charges (as applicable for the Contract Year in which the Infirm Power is supplied or next Contract Year in case no Energy Charges are mentioned for such Contract Year), for any Infirm Power generated by any unit of the Power Station. The quantum of Infirm Power generated shall be computed from the energy accounting and audit meters installed at the Power Station as per Central Electricity Authority (Installation and Operation of Meters) Regulations 2006 as amended from time to time.

### 8.2 Delivery and Content of Monthly Bills/Provisional Bills

8.2.1 The Seller shall issue to each Procurer a signed Monthly Bill for the immediately preceding Month not later than ten (10) days of the next Month. In case the Monthly Bill for the immediately preceding Month is issued after ten (10) days of the next Month, the Due Date for payment of such Monthly Bill shall be extended by thirty (30) days.

Provided that:

- a. if the date of commencement of supply of power falls during the period between the first (1st) day and up to and including the fifteenth (15th) day of a Month, the first Monthly Bill shall be issued for the period until the last day of such Month, or
- b. if the date of commencement of supply of power falls after the fifteenth (15th) day of a Month, the first Monthly Bill shall be issued for the period commencing from the Delivery Date until the last day of the immediately following Month.

Provided further that if a Monthly Bill is received on or before the second (2nd) day of a Month, it shall be deemed to have been received on the second (2nd) Business Day of such Month.

8.2.2 Each Monthly Bill and Provisional Bill shall include:

- i. Availability and REA for the relevant Month for Monthly Bill and RLDC's daily energy account for Provisional Bill;
- ii. the Seller's computation of various components of the monthly Tariff Payment in accordance with Schedule 4; and
- iii. supporting data, documents and calculations in accordance with this Agreement.

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### 8.3 Payment of Monthly Bills

- 8.3.1 The Procurers shall pay the amount payable under the Monthly Bill on the Due Date to such account of the Seller, as shall have been previously notified by the Seller in accordance with Article 8.3.4 below.
- 8.3.2 All payments made by the Procurer(s) shall be appropriated by the Seller in the following order of priority:
- i) towards Late Payment Surcharge, if any;
  - ii) towards the earlier unpaid Monthly Bill(s), if any; and
  - iii) towards the then current Monthly Bill.
- 8.3.3 All payments required to be made under this Agreement shall only include any deduction or set off for:
- i) deductions required by the Law; and
  - ii) amounts claimed by the Procurer(s) from the Seller, through an invoice duly acknowledged by the Seller, to be payable by the Seller, and not disputed by the Seller within thirty (30) days of receipt of the said Invoice and such deduction or set-off shall be made to the extent of the amounts not disputed. It is clarified that the Procurer(s) shall be entitled to claim any set off or deduction under this Article, after expiry of the said thirty (30) Days period.

Provided further, the maximum amounts that can be deducted or set-off by all the Procurers taken together under this Article in a Contract Year shall not exceed Rupees ..... [*Insert amount calculated as Rs. 2.5 lakhs per MW of Contracted Capacity*] only, except under sub Article (i) above.

- 8.3.4 The Seller shall open a bank account at ..... [*Insert name of place*] (the "Seller's Designated Account") for all Tariff Payments to be made by Procurers to the Seller, and notify Procurers of the details of such account at least ninety (90) Days before the dispatch of the first Monthly Bill. Procurers shall also designate a bank account at ..... [*Insert name of place*] (the "Procurer's Designated Account") for payments to be made by the Seller (including Supplementary Bills) to Procurers and notify the Seller of the details of such account ninety (90) Days before the Scheduled Delivery Date. The Procurers and the Seller shall instruct their respective bankers to make all payments under this Agreement to the Seller's Designated Account or the Procurer's Designated Account, as the case may be, and shall notify either Party of such instructions on the same day.
- 8.3.5 In the event of delay in payment of a Monthly Bill by the Procurers beyond its Due Date, a Late Payment Surcharge shall be payable by such Procurers to the Seller at the rate of two percent (2%) in excess of the applicable SBAR per annum, on the amount of outstanding payment, calculated on a day to day basis (and compounded with monthly



rest), for each day of the delay. The Late Payment Surcharge shall be claimed by the Seller through the Supplementary Bill.

8.3.6 For payment of any Bill before Due Date, the following Rebate shall be paid by the Seller to the Procurer in the following manner. *[Note: These Rebate rates along with the slabs can be changed and decided by the Procurer at the time of issuing the RFP Documents]*

- a) The Provisional Bill shall be raised by the Seller on the last Business Day of the Month where the Capacity Charges shall be based on the Declared Capacity for the entire Month and the Energy Charges shall be based on the final implemented Scheduled Energy up to 25th day of the Month. Rebate shall be payable at the rate of two point two five percent (2.25%) of the amount (which shall be the full amount due under the Provisional Bill) credited to Seller’s account on first day of the Month and Rebate amount shall reduce at the rate of zero point zero five percent (0.05%) for each day, up to fifth (5th) day of the Month.
- b) Applicable rate of Rebate at (a) above shall be based on the date on which payment has been actually credited to the Seller’s account. Any delay in transfer of money to the Seller’s account, on account of public holiday, bank holiday or any other reasons shall be to the account of the Procurers.
- c) Two percent (2%) Rebate shall be provided for credit of payment to the Seller’s account made within one (1) day of the presentation of Monthly Bill for the Month for which the Provisional Bill was raised earlier.
- d) For credit to Seller’s account made on other days the Rebate on Monthly Bill shall be as under:

Number of days before Due Date of Monthly Bill	Rate of Rebate applicable
1 to 5	Two percent (2.00%)
6th day thereafter up to the Due Date	percent (2%) less [0.033% x {29 less number of days before Due Date when the payment is made by the Procurer(s)}]

In case of presentation of Monthly Bill beyond the sixth (6th) day of the Month, two percent (2%) Rebate will be applicable only on the day of presentation of Monthly Bill and beyond that Rebate will be applicable as per the table above.

- e) Rebate of two point two five percent (2.25%) to two point zero five percent (2.05%) will be available to those Procurers who credit one hundred percent (100%) of the Provisional Bill within first five (5) days of the Month to Seller’s account/ designated account and balance amount, if any, based on Monthly Bill (as per REA) within the Month.

- f) In the event only part amount of Provisional Bill is credited to the Seller’s account, within first five (5) days and the balance amount is credited to the Sellers account during other days of the Month, Rebate will be paid on such part amount, at the rate of two percent (2%) plus zero point zero three three percent (0.033%) per day for the number of days earlier than the 6th day when such part amount is credited to the Sellers’ account;
- g) The above Rebate will be allowed only to the Procurers who credit to the Seller’s account the full Monthly Bill.
- h) No Rebate shall be payable on the Bills raised on account of Change in Law relating to taxes, duties and cess;
- i) If the Provisional Bill has not been paid by the date of receipt of the Monthly Bill then such Provisional Bill shall not be payable, provided in case the Provisional Bill has already been paid, then only the difference between the Monthly Bill and Provisional Bill shall be payable.

## 8.4 Payment Mechanism

### Letter of Credit:

- 8.4.1 The Procurers shall provide to the Seller, in respect of payment of its Monthly Bills and/or Supplementary Bills, a monthly unconditional, revolving and irrevocable letter of credit (“Letter of Credit”), opened and maintained by the Procurers, which may be drawn upon by the Seller in accordance with this Article. The Procurers shall provide the Seller draft of the Letter of Credit proposed to be provided to the Seller six (6) Months before the Scheduled Delivery Date or Revised Scheduled Delivery Date, as the case may be. Further, the Letter of Credit shall be provided from the bank which is appointed as Default Escrow Agent under the Default Escrow Agreement.
- 8.4.2 Not later than one (1) Month before the Scheduled Delivery Date or Revised Scheduled Delivery Date, as the case may be, the Procurers shall through a scheduled bank at ..... [Identified Place(s)] open a Letter of Credit in favour of the Seller, to be made operative from a date prior to the Due Date of its first Monthly Bill under this Agreement. The Letter of Credit shall have a term of twelve (12) Months and shall be renewed annually, for an amount equal to:
- i) for the first Contract Year, equal to one point one (1.1) times the estimated average monthly billing based on Normative Availability;
  - ii) for each subsequent Contract Year, equal to the one point one (1.1) times the average of the monthly Tariff Payments of the previous Contract Year.

Provided that the Seller shall not draw upon such Letter of Credit prior to the Due Date of the relevant Monthly Bill and/or Supplementary Bill, and shall not make more than one drawal in a Month.

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Provided further that if at any time, such Letter of Credit amount falls short of the amount specified in Article 8.4.2 otherwise than by reason of drawal of such Letter of Credit by the Seller, the Procurer/relevant Procurer shall restore such shortfall within seven (7) days.

8.4.3 The Procurers shall cause the scheduled bank issuing the Letter of Credit to intimate the Seller, in writing regarding establishing of such irrevocable Letter of Credit.

8.4.4 In case of drawal of the Letter of Credit by the Seller, in accordance with Article 8.4, the amount of the Letter of Credit shall be reinstated in accordance with the terms of Article 8.4.11.3.

8.4.5 If the Procurer(s) fails to pay a Monthly Bill or Supplementary Bill or part thereof within and including the Due Date, then, subject to Article 8.6.7, the Seller may draw upon the Letter of Credit, and accordingly the bank shall pay without any reference or instructions from the Procurer, an amount equal to such Monthly Bill or Supplementary Bill or part thereof plus Late Payment Surcharge, if applicable, in accordance with [Article 8.3.5](#) above, by presenting to the scheduled bank issuing the Letter of Credit, the following documents:

- i) a copy of the Monthly Bill or Supplementary Bill which has remained unpaid by the Procurer;
- ii) a certificate from the Seller to the effect that the bill at item (i) above, or specified part thereof, is in accordance with the Agreement and has remained unpaid beyond the Due Date; and
- iii) calculations of applicable Late Payment Surcharge, if any.

8.4.6 Further, on the occurrence of such an event as envisaged herein, the Seller shall immediately inform all the Procurers of the said failure of the Procurer to pay the Monthly Bill or Supplementary Bill or part thereof and shall send regular updates to all the Procurers, which shall not be less than one (1) day in every week, containing details of the amount claimed by the Seller as per the provisions of this Article and payments made by the Procurer pursuant to such claim.

8.4.7 The Procurers shall ensure that the Letter of Credit shall be renewed not later than forty five (45) days prior to its expiry.

8.4.8 All costs relating to opening and maintenance of the Letter of Credit shall be borne by the Procurers, however, Letter of Credit negotiation charges shall be borne and paid by the Seller.

8.4.9 Where necessary, the Letter of Credit may also be substituted by an unconditional and irrevocable bank guarantee or an equivalent instrument as mutually agreed by the Procurers and the Seller.

8.4.10 [Upon fulfilment of the conditions mentioned under Article 8.4.11.2 the Letter of Credit amount as mentioned in Article 8.4.2 shall be changed to one \(1\) time the average of the Monthly Tariff Payments of the previous Contract Year instead of one point one \(1.1\) times the average of the Monthly Tariff Payments of the previous Contract Year.](#)



#### 8.4.11 Collateral Arrangement

8.4.11.1 As a further support for the Procurers' obligations, on or prior to the Effective Date, the Procurers, the Seller and the default escrow agent shall execute separate Default Escrow Agreement (referred as "Default Escrow Agreement") for the establishment and operation of the Default Escrow Account in favour of the Seller, through which the revenues of the relevant Procurer shall be routed and used as per the terms of the Default Escrow Agreement. The Procurers, default escrow agent and the Seller shall contemporaneously with the execution of the Default Escrow Agreements enter into separate Agreements to Hypothecate Cum Deed of Hypothecation, whereby the Procurers shall agree to hypothecate, to the Seller, effective from forty five (45) days prior to the Scheduled Delivery Date or Revised Scheduled Delivery Date, as the case maybe, the amounts to the extent as required for the Letter of Credit as per Article 8.4.2 routed through the Default Escrow Accounts and the Receivables in accordance with the terms of the Agreement to Hypothecate Cum Deed of Hypothecation. The Default Escrow Agreements and the Agreements to Hypothecate Cum Deed of Hypothecation are collectively referred to as the "Collateral Arrangements". The minimum revenue flow in any Month in the Default Escrow Account(s) shall be at least equal to the amount required for the Letter of Credit as per Article 8.4.2.

Provided that the Procurers shall ensure that the Seller has first ranking charge on the revenues routed through the Default Escrow Accounts and the 'Receivables' in accordance with the terms of the Agreements to Hypothecate Cum Deed of Hypothecation. However, such first ranking charge shall be on the amounts, in excess of amounts, which have already been charged or agreed to be charged prior to the date of the execution of the Default Escrow Agreements.

8.4.11.2 On the occurrence of all of the following events in respect of a Procurer:

- i. A period of not less than twenty-four (24) Months from Delivery Date, has elapsed; and
- ii. The Procurer has achieved, for its ability to honour its Tariff Payment obligations to the Seller under this Agreement, a credit rating of 'A' or better, from a SEBI registered Indian credit rating agency, consistently for a period of at least three (3) years; and
- iii. Immediately prior to the three (3) year period mentioned in sub-article (ii) above, for a period of at least twelve (12) Months there has been no Procurer Event of Default under Article 11 of this Agreement,

the Procurer shall intimate the Seller in writing of the occurrence of the same and its intention to discontinue the Collateral Arrangement. If the Seller desires to continue with the Collateral Arrangement, it shall intimate the same to the Procurers in writing within thirty (30) days of receipt of intimation from the Procurers and in such case the Seller shall be liable to bear the costs of continuation of the Collateral Arrangement with

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effect from such date. In case the Seller fails to respond or agrees to discontinue, the Collateral Arrangement shall forthwith cease and the Default Escrow Agreements and the Agreements to Hypothecate Cum Deed of Hypothecation shall stand terminated as per terms thereof.

Provided that in case of any of conditions mentioned under (i), (ii) or (iii) in Article 8.4.11.2 ceases to be true, then within ninety (90) days of the occurrence of such event, the Procurer shall reinstate the Collateral Arrangement, at its own cost.

8.4.11.3 If the Letter of Credit is insufficient to pay for the due payments to the Seller or is not replenished for the drawals made, then within a period of seven (7) days from the date such shortfall in the Letter of Credit occurs, the Letter of Credit shall be reinstated to the requisite amount specified in this Agreement, and in the manner specified in the Default Escrow Agreement.

## 8.5 Third Party Sales on Default

8.5.1 Upon the occurrence of an event where the Procurers have not made payment by the Due Date of an Invoice through the Payment Mechanism provided in Article 8.4 of this Agreement, the Seller shall follow the steps as enumerated in Articles 8.5.2 and 8.5.4.

8.5.2 On the occurrence of the event mentioned in Article 8.5.1 and after giving a notice of at least seven (7) days to the defaulting Procurer(s), the Seller shall have the obligation to offer twenty five (25) per cent of the Contracted Capacity pertaining to such defaulting Procurer(s) (“Default Electricity”) to the other non-defaulting Procurers. The non defaulting Procurers have the right to receive the whole or any part of such Default Electricity by giving a notice within a further two (2) Business Days, in the following manner

- a) In ratios equal to their then existing Contracted Capacities at the same Tariff as would have been applicable to the defaulting Procurer. Provided that, if any of the non-defaulting Procurers does not elect to receive the Default Electricity so offered, the Seller shall offer the balance of the Default Electricity to other non-defaulting Procurer(s) at the same Tariff in proportion to their additional requirement as intimated.
- b) At a lower Tariff as may be specified by non-defaulting Procurer(s) to the extent of their capacity requirements, in descending order of the Tariff. Provided that, the Seller has the right to obtain tariff quotes from third party(s) for sale of Default Electricity not requisitioned under (a) above. The tariff quotes received from the non-defaulting Procurer(s) and such third party(s) shall be ranked in descending order of the tariff and the Seller shall sell Default Electricity in such descending order and in compliance with Article 8.5.3, to the extent applicable.

In case of both (a) and (b) above if non-defaulting Procurer(s) receive Default Electricity, then, subject to applicability of Article 8.4.11.2 of this Agreement, such non defaulting

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Procurer(s) shall within seven (7) days of exercising the right of election, either open an additional Letter of Credit/ enhance the existing Letter of Credit in accordance with the principles set forth in Article 8.4 **or** increase the value of escrow cover under the Default Escrow Agreement and related security under Agreement to Hypothecate cum deed of Hypothecation to secure payment for that part of the Default Electricity as such non-defaulting Procurer elects to receive.

Provided further that if the non-defaulting Procurer(s) continue to receive Default Electricity for period more than two(2) months then within two (2) Months of election by the non-defaulting Procurer(s) as mentioned above, unless the event outlined in Article 8.5.8 has occurred, such Procurer(s) shall open a Letter of Credit/enhance the existing Letter of Credit in accordance with the principles set forth in Article 8.4 **and** shall increase the value of escrow cover under the Default Escrow Agreement and related Agreement to Hypothecation cum Deed of Hypothecation. Provided that in case the events mentioned in Article 8.4.11.2 (i), (ii) and (iii) are true, then the requirement with respect to Default Escrow Agreement and Agreement to Hypothecate cum Deed of Hypothecation in this Article 8.5.2 shall be applicable as per Article 8.4.11.2.

8.5.3 If all the non defaulting Procurers do not make the election to receive the Default Electricity or a part thereof, within two (2) Business Days of it being so offered under Article 8.5.2, or all such non-defaulting Procurers expressly waive their first right to receive the same, the Seller shall have the right (but not the obligation) to make available and sell the Default Electricity or a part thereof to a third party, namely:

- a) any consumer, subject to applicable Law; or
- b) any licensee under the Electricity Act, 2003;

8.5.4 If the Collateral Arrangement is not fully restored by the defaulting Procurer within thirty (30) days of the non-payment by the defaulting Procurer of an Invoice by its Due Date, the provisions of Article 8.5.2 or Article 8.5.2 (as the case may be) and Article 8.5.3 shall apply with respect to one hundred per cent (100%) of the Contracted Capacity. Provided that in case the events mentioned in Article 8.4.11.2 (i), (ii) and (iii) are true, then this Article 8.5.4 shall be applicable.

8.5.5 In the case of Article 8.5.3 or 8.5.4, the Seller shall ensure that sale of power to the shareholder(s) of the Seller or to any direct or indirect Affiliate of the Seller/ the shareholder(s) of the Seller is not at a price less than the Energy Charges.

8.5.6 In case of third party sales or sales to any other non-defaulting Procurers as permitted by this Article 8.5, the adjustment of the surplus revenue over Energy Charge (applicable to the defaulting Procurer) attributable to such Default Electricity sold, shall be adjusted as under :

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- a) the surplus up to the Tariff shall be used towards the extinguishment of the subsisting payment liability of the defaulting Procurer towards the Seller; and
- b) the surplus if any above the Tariff shall be retained by the Seller.

8.5.7 The liability of the defaulting Procurers towards making Capacity Charge payments to the Seller even for Default Electricity sold to third parties or other non- defaulting Procurers or remaining unsold during such periods will remain unaffected.

Provided such Capacity Charge payment liability shall cease on the date which occurs on the expiry of a period of ..... *[Insert period]* from the date of occurrence of a Procurer Event of Default under Article 11.2.1 (i), provided if prior to such date, such Procurer Event of Default has not ceased and regular supply of power for a period of at least ninety (90) continuous Days has not occurred.

8.5.8 Sales to any person or Party, other than the defaulting Procurer under Article 8.5, shall cease and regular supply of power to the defaulting Procurer in accordance with the provisions of this Agreement shall commence and be restored on the later of the two following dates or any date before this date at the option of Seller:

- a) the day on which the defaulting Procurer pays the amount due to the Seller and renews the Letter of Credit and restores Default Escrow Account (if applicable) as mentioned in Article 8.4.11.1; or
- b) the date being "x" days from the date on which the defaulting Procurer pays the amount due to the Seller, where "x" days shall be calculated in accordance with Schedule 2.

## 8.6 Disputed Bill

8.6.1 If a Party does not dispute a Monthly Bill, Provisional Bill or a Supplementary Bill raised by the other Party by the Due Date, such Bill shall be taken as conclusive.

8.6.2 If a Party disputes the amount payable under a Monthly Bill, Provisional Bill or a Supplementary Bill, as the case may be, that Party shall, within thirty (30) days of receiving such Bill, issue a notice (the "Bill Dispute Notice") to the invoicing Party setting out:

- i) the details of the disputed amount;
- ii) its estimate of what the correct amount should be; and
- iii) all written material in support of its claim.

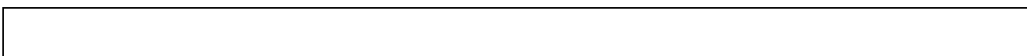
8.6.3 If the invoicing Party agrees to the claim raised in the Bill Dispute Notice issued pursuant to Article 8.6.2, the invoicing Party shall revise such Bill within seven (7) days of receiving the Bill Dispute Notice. The disputing Party shall thereafter within seven (7) Days of receiving the revised Bill from the invoicing Party, make the payment thereunder, and if the disputing Party has already made the excess payment, the invoicing

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Party shall refund to the disputing Party such excess amount within fifteen (15) days of receiving the Bill Dispute Notice. In such a case excess amount shall be refunded along with interest at the same rate as Late Payment Surcharge, which shall be applied from the date on which such excess payment was made by the disputing Party to the invoicing Party and up to and including the date on which such payment has been received as refund.

- 8.6.4 If the invoicing Party does not agree to the claim raised in the Bill Dispute Notice issued pursuant to Article 8.6.2, it shall, within fifteen (15) days of receiving the Bill Dispute Notice, furnish a notice (Bill Disagreement Notice) to the disputing Party providing:
- i) reasons for its disagreement;
  - ii) its estimate of what the correct amount should be; and
  - iii) all written material in support of its counter-claim.
- 8.6.5 Upon receipt of the Bill Disagreement Notice by the disputing Party under Article 8.6.4, authorized representative(s) or a director of the board of directors/ member of board of the disputing Party and the invoicing Party shall meet and make best endeavours to amicably resolve such dispute within fifteen (15) days of receipt of the Bill Disagreement Notice.
- 8.6.6 If the Parties do not amicably resolve the Dispute within fifteen (15) days of receipt of Bill Disagreement Notice pursuant to Article 8.6.4, the matter shall be referred to Dispute resolution in accordance with Article 14.
- 8.6.7 In case of Disputed Bills, it shall be open to the aggrieved Party to approach the Appropriate Commission for Dispute resolution in accordance with Article 14 and also for interim orders protecting its interest including for orders for interim payment pending Dispute resolution and the Parties shall be bound by the decision of the Appropriate Commission, including in regard to interest or Late Payment Surcharge, if any directed to be paid by the Appropriate Commission.
- 8.6.8 If a Dispute regarding a Monthly Bill, Provisional Bill or a Supplementary Bill is settled pursuant to Article 8.6 or by the Dispute resolution mechanism provided in this Agreement in favour of the Party that issues a Bill Dispute Notice, the other Party shall refund the amount, if any incorrectly charged and collected from the disputing Party or pay as required, within five (5) days of the Dispute either being amicably resolved by the Parties pursuant to Article 8.6.5 or settled by Dispute resolution mechanism along with interest at the same rate as Late Payment Surcharge from the date on which such payment had been made to the invoicing Party or the date on which such payment was originally due, as may be applicable.
- 8.6.9 For the avoidance of doubt, it is clarified that despite a Dispute regarding an Invoice, the Procurers shall, without prejudice to its/ their right to Dispute, be under an obligation to make payment, of the lower of (a) an amount equal to simple average of last three (3) Months Invoices (being the undisputed portion of such three Months' invoices) and (b) Monthly Invoice which is being disputed, provided such Monthly Bill has been raised based on the REA and in accordance with this Agreement.



## 8.7 Quarterly and Annual Reconciliation

- 8.7.1 The Parties acknowledge that all payments made against Monthly Bills, Provisional Bills and Supplementary Bills shall be subject to quarterly reconciliation at the beginning of the following quarter of each Contract Year and annual reconciliation at the end of each Contract Year to take into account REA, Tariff adjustment payments, Tariff Rebate, Late Payment Surcharge, or any other reasonable circumstance provided under this Agreement.
- 8.7.2 The Parties, therefore, agree that as soon as all such data in respect of any quarter of a Contract Year or a full Contract Year as the case may be has been finally verified and adjusted, the Seller and Procurers shall jointly sign such reconciliation statement. Within fifteen (15) days of signing of a reconciliation statement, the Seller or Procurers, as the case may be, shall raise a Supplementary Bill for the Tariff adjustment payments for the relevant quarter/ Contract Year and shall make payment of such Supplementary Bill for the Tariff adjustment payments for the relevant quarter/ Contract Year, as may be due as a result of such reconciliation. Late Payment Surcharge/ interest shall be payable in such a case from the date on which such payment had been made to the invoicing Party or the date on which any payment was originally due, as may be applicable. Any Dispute with regard to the above reconciliation shall be dealt with in accordance with the provisions of Article 14.

## 8.8 Payment of Supplementary Bill

- 8.8.1 Either Party may raise a bill on the other Party ("Supplementary Bill") for payment on account of:
- i) Adjustments required by the Regional Energy Account (if applicable);
  - ii) Tariff Payment for change in parameters, pursuant to provisions in Schedule 4; or
  - iii) Change in Law as provided in Article 10,

and such Supplementary Bill shall be paid by the other Party.

- 8.8.2 The Procurers shall remit all amounts due under a Supplementary Bill raised by the Seller to the Seller's Designated Account by the Due Date and notify the Seller of such remittance on the same day or the Seller shall be eligible to draw such amounts through the Letter of Credit. Similarly, the Seller shall pay all amounts due under a Supplementary Bill raised by Procurer(s) by the Due Date to concerned Procurer's designated bank account and notify such Procurer(s) of such payment on the same day. For such payments by the Procurer(s), Rebate as applicable to Monthly Bills pursuant to Article 8.3.6 shall equally apply.
- 8.8.3 In the event of delay in payment of a Supplementary Bill by either Party beyond its Due Date, a Late Payment Surcharge shall be payable at the same terms applicable to the Monthly Bill in Article 8.3.5.

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**8.9** *The copies of all notices/ offers which are required to be sent as per the provisions of this Article 8, shall be sent by a Party, simultaneously to all Parties.*



**9** ARTICLE 9 : FORCE MAJEURE

**9.1** Definitions

9.1.1 In this Article, the following terms shall have the following meanings:

**9.2** Affected Party

9.2.1 An affected Party means any of the Procurers or the ..... *[Insert "Seller" if Seller is NOT a Trading Licensee, or insert "Developer" if Seller is a Trading Licensee]* whose performance has been affected by an event of Force Majeure.

9.2.2 [An event of Force Majeure affecting the CTU/ STU or any other agent of the Seller, which has affected the transmission facilities from the Power Station to the Delivery Point, shall be deemed to be an event of Force Majeure affecting Seller.

9.2.3 Any event of Force Majeure affecting the performance of the ..... *[Insert "Seller's" if Seller is NOT a Trading Licensee, or "Developer's" if Seller is a Trading Licensee]* contractors shall be deemed to be an event of Force Majeure affecting Seller only if the Force Majeure event is affecting and resulting in:

- a) late delivery of plant, machinery, equipment, materials, spare parts, Fuel, water or consumables for the Power Station; or
- b) a delay in the performance of any of the ..... *[Insert "Seller's" if Seller is NOT a Trading Licensee, or "Developer's" if Seller is a Trading Licensee]* contractors.

9.2.4 Similarly, any event of Force Majeure affecting the performance of the Procurers' contractor for setting up or operating Interconnection Facilities shall be deemed to be an event of Force Majeure affecting Procurer(s) only if the Force Majeure event is resulting in a delay in the performance of Procurer's contractors.

**9.3** Force Majeure

9.3.1 A 'Force Majeure' means any event or circumstance or combination of events and circumstances including those stated below that wholly or partly prevents or unavoidably delays an Affected Party in the performance of its obligations under this Agreement, but only if and to the extent that such events or circumstances are not within the reasonable control, directly or indirectly, of the Affected Party and could not have been avoided if the Affected Party had taken reasonable care or complied with Prudent Utility Practices:

**i. Natural Force Majeure Events**

act of God, including, but not limited to lightning, drought, fire and explosion (to the extent originating from a source external to the site), earthquake, volcanic eruption, landslide, flood, cyclone, typhoon, tornado, or exceptionally adverse weather conditions which are in excess of the statistical measures for the last hundred (100) years,



**ii. Non-Natural Force Majeure Events**

1. Direct Non-Natural Force Majeure Events attributable to the Procurer(s)

- a) Nationalization or compulsory acquisition by any Indian Governmental Instrumentality (under the State Government of the Procurers or the Central Government of India) of any material assets or rights of the Seller; or
- b) the unlawful, unreasonable or discriminatory revocation of, or refusal to renew, any Consents, Clearances and Permits required by the Seller to perform its obligations under the RFP Documents or any unlawful, unreasonable or discriminatory refusal to grant any Consents, Clearances and Permits required for the development/ operation of the Power Station , provided that a Competent Court of Law declares the revocation or refusal to be unlawful, unreasonable and discriminatory and strikes the same down.
- c) any other unlawful, unreasonable or discriminatory action on the part of an Indian Government Instrumentality (under the State Government of the Procurers or the Central Government of India) which is directed against the supply of power by the Seller to the Procurers, provided that a Competent Court of Law declares the action to be unlawful, unreasonable and discriminatory and strikes the same down.

2. Direct Non-Natural Force Majeure Events not attributable to the Procurer(s)

- a) Nationalization or compulsory acquisition by any Indian Governmental Instrumentality (other than those under the State Government of the Procurers) of any material assets or rights of the Seller; or
- b) the unlawful, unreasonable or discriminatory revocation of, or refusal to renew, any Consents, Clearances and Permits required by Seller to perform its obligations under the RFP Documents or any unlawful, unreasonable or discriminatory refusal to grant any Consents, Clearances and Permits required for the development / operation of the Power Station , provided that a Competent Court of Law declares the revocation or refusal to be unlawful, unreasonable and discriminatory and strikes the same down.
- c) any other unlawful, unreasonable or discriminatory action on the part of an Indian Government Instrumentality (other than those under the State Government of the Procurers or the Central Government of India) which is directed against the supply of



power by the Seller to the Procurers, provided that a Competent Court of Law declares the action to be unlawful, unreasonable and discriminatory and strikes the same down.

### 3. Indirect Non-Natural Force Majeure Events

- a) any act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo;, revolution, riot, insurrection, terrorist or military action; or
- b) radio active contamination or ionising radiation originating from a source in India or resulting from another Indirect Non Natural Force Majeure Event mentioned above excluding circumstances where the source or cause of contamination or radiation is brought or has been brought into or near the Power Station by the Affected Party or those employed or engaged by the Affected Party.
- c) Industry wide strikes and labor disturbances having a nationwide impact in India.

## 9.4 Force Majeure Exclusions

- 9.4.1 Force Majeure shall not include (i) any event or circumstance which is within the reasonable control of the Parties and (ii) the following conditions, except to the extent that they are consequences of an event of Force Majeure:
- a. **Unavailability, late delivery, or changes in cost of the plant, machinery, equipment, materials, spare parts, Fuel or consumables for the Power Station;**
  - b. **Delay in the performance of any contractor, sub-contractor or their agents excluding the conditions as mentioned in Article 9.2;**
  - c. **Non-performance resulting from normal wear and tear typically experienced in power generation materials and equipment;**
  - d. **Strikes or labour disturbance at the facilities of the Affected Party;**
  - e. **Insufficiency of finances or funds or the agreement becoming onerous to perform; and**
  - f. **Non-performance caused by, or connected with, the Affected Party's:**
    - i. **Negligent or intentional acts, errors or omissions;**
    - ii. **Failure to comply with an Indian Law; or**
    - iii. **Breach of, or default under this Agreement or any other RFP Documents.**

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## 9.5 Notification of Force Majeure Event

9.5.1 The Affected Party shall give notice to the other Party of any event of Force Majeure as soon as reasonably practicable, but not later than seven (7) days after the date on which such Party knew or should reasonably have known of the commencement of the event of Force Majeure. If an event of Force Majeure results in a breakdown of communications rendering it unreasonable to give notice within the applicable time limit specified herein, then the Party claiming Force Majeure shall give such notice as soon as reasonably practicable after reinstatement of communications, but not later than one (1) day after such reinstatement.

Provided that such notice shall be a pre-condition to the Affected Party's entitlement to claim relief under this Agreement. Such notice shall include full particulars of the event of Force Majeure, its effects on the Party claiming relief and the remedial measures proposed. The Affected Party shall give the other Party regular (and not less than monthly) reports on the progress of those remedial measures and such other information as the other Party may reasonably request about the Force Majeure Event.

9.5.2 The Affected Party shall give notice to the other Party of (i) the cessation of the relevant event of Force Majeure; and (ii) the cessation of the effects of such event of Force Majeure on the performance of its rights or obligations under this Agreement, as soon as practicable after becoming aware of each of these cessations.

## 9.6 Duty to Perform and Duty to Mitigate

9.6.1 To the extent not prevented by a Force Majeure Event pursuant to Article 9.3, the Affected Party shall continue to perform its obligations pursuant to this Agreement. The Affected Party shall use its reasonable efforts to mitigate the effect of any Force Majeure Event as soon as practicable.

## 9.7 Available Relief for a Force Majeure Event

9.7.1 Subject to this Article 9:

- (a) no Party shall be in breach of its obligations pursuant to this Agreement except to the extent that the performance of its obligations was prevented, hindered or delayed due to a Force Majeure Event;
- (b) every Party shall be entitled to claim relief in relation to a Force Majeure Event in regard to its obligations, including but not limited to those specified under Article 4.7;
- (c) For the avoidance of doubt, it is clarified that no Tariff shall be paid by the Procurers for the part of Contracted Capacity or part thereof affected by a Natural Force Majeure Event affecting the .....  
*[Insert "Seller" if Seller is NOT a Trading Licensee, or insert*

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“Developer” if Seller is a Trading Licensee], for the duration of such Natural Force Majeure Event affecting the ..... [Insert “Seller” if Seller is NOT a Trading Licensee, or insert “Developer” if Seller is a Trading Licensee]. For the balance part of the Contracted Capacity, the Procurer(s) shall pay the Tariff to the Seller, provided during such period of Natural Force Majeure Event affecting the ..... [Insert “Seller” if Seller is NOT a Trading Licensee, or insert “Developer” if Seller is a Trading Licensee], the balance part of the Power Station is declared to be Available for scheduling and dispatch as per ABT for supply of power by the Seller to the Procurers;

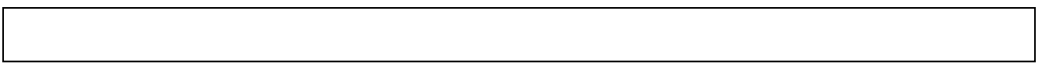
In case of a Natural Force Majeure Event affecting the Procurers no Tariff shall be paid by the Procurer to the Seller for the duration of such Natural Force Majeure Event affecting the Procurers :

(d) [Insert in the case of long term procurement and when the Seller is not a Trading Licensee] If the average Availability of the Power Station is reduced below eighty percent (80%) of Normative Availability for over two (2) consecutive months or for any non consecutive period of four (4) months both within any continuous period of 60 Months [Procurer to insert number of months, based on the duration for procurement] Months, as a result of an Indirect Non Natural Force Majeure Event, then, with effect from the end of such two (2) consecutive months or four (4) non consecutive months so long as the daily average Availability of the Power Station continues to be reduced below eighty percent (80%) of Normative Availability as a result of an Indirect Non Natural Force Majeure Event of any kind, the Procurers shall make payments for Debt Service, subject to a maximum of Capacity Charges based on Normative Availability which are due under the Financing Agreements and these amounts shall be paid from the date, being the later of a) the date of cessation of such Indirect Non Natural Force Majeure Event and b) the completion of sixty (60) days from the receipt of the Financing Agreements by the Procurers from the Seller, in the form of an increase in Capacity Charge.

Provided payments for such Debt Service shall be limited to the Debt Service proportional to the Contracted Capacity of the Procurers from the Power Station.

Provided such Capacity Charge increase shall be determined by Appropriate Commission the basis of putting the Seller in the same economic position as the Seller would have been in case the Seller had been paid Debt Service in a situation where the Indirect Non Natural Force Majeure Event had not occurred.

Provided that the Procurers will have the above obligation to make payment for the Debt Service only (a) after supply of power from the





Power Station affected by such Indirect Non Natural Force Majeure Event has started, and (b) only if in the absence of such Indirect Non Natural Force Majeure Event, the Availability of Power Station would have resulted in Capacity Charges equal to Debt Service.

(e) If the average Availability of the Power Station is reduced below Normative Availability for over two (2) consecutive months or for any non consecutive period of four (4) months both within any continuous period of 60 Months [Procurer to insert number of months, based on the duration for procurement], as a result of a Direct Non Natural Force Majeure Event attributable to the Procurers, then, with effect from the end of such two (2) consecutive months or four (4) non consecutive months and for so long as the daily average Availability of the Power Station of the ..... [Insert "Seller" if Seller is NOT a Trading Licensee, or "Developer" if Seller is a Trading Licensee] continues to be reduced below Normative Availability as a result of a Direct Non Natural Force Majeure Event attributable to the Procurers, the Seller may elect through a written notice to the Procurers, to deem the Availability to be equal to Normative Availability from the end of such two (2) consecutive months or four (4) non consecutive months, regardless of its actual Available Capacity. In such a case, the Procurers shall be liable to make payment of Capacity Charges calculated on such deemed Normative Availability, after the cessation of the effects of Direct Non Natural Direct Force Majeure Event attributable to the Procurers in the form of an increase in Capacity Charge.

Provided such Capacity Charge increase shall be determined by Appropriate Commission on the basis of putting the ..... [Insert "Seller" if Seller is NOT a Trading Licensee, or "Developer" if Seller is a Trading Licensee] in the same economic position as the ..... [Insert "Seller" if Seller is NOT a Trading Licensee, or "Developer" if Seller is a Trading Licensee] would have been in case the Seller had been paid Capacity Charges in a situation where the Direct Non Natural Force Majeure Event attributable to the Procurers had not occurred.

(f) If the average Availability of the Power Station is reduced below Normative Availability for over two (2) consecutive months or for any non consecutive period of four (4) months both within any continuous period of 60 Months (.....) Months [Procurer to insert number of months, based on the duration for procurement], as a result of a Direct Non Natural Force Majeure Event not attributable to the Procurer(s), then, with effect from the end of such two (2) consecutive months or four (4) non consecutive months and for so long as the daily average Availability of the Power Station of the ..... [Insert "Seller" if Seller is NOT a Trading Licensee, or insert "Developer" if Seller is a Trading Licensee] continues to be reduced below Normative Availability as a result of a Direct Non Natural Force

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Majeure Event not attributable to the Procurers, the Seller may elect through a written notice to the Procurer(s), to deem the Availability to be equal to Normative Availability from the end of such two (2) consecutive months or four (4) non consecutive months, regardless of its actual Available Capacity. In such a case, the Procurers shall be liable to make payment for Debt Service, subject to a maximum of Capacity Charges calculated on such deemed Normative Availability, after the cessation of the effects of Direct Non Natural Direct Force Majeure Event not attributable to the Procurers in the form of an increase in Capacity Charge.

Provided such Capacity Charge increase shall be determined by Appropriate Commission on the basis of putting the ..... [Insert "Seller" if Seller is NOT a Trading Licensee, or "Developer" if Seller is a Trading Licensee] in the same economic position as the ..... [Insert "Seller" if Seller is NOT a Trading Licensee, or "Developer" if Seller is a Trading Licensee] would have been in case the Seller had been paid Capacity Charges in a situation where the Direct Non Natural Force Majeure Event not attributable to the Procurers had not occurred.

(g) For the avoidance of doubt, it is specified that the charges payable under this Article 9 shall be paid by the Procurers in proportion to their then existing Contracted Capacities.

## 9.8 Additional Compensation and Procurer's Subrogation

9.8.1 If the Seller is entitled, whether actually or contingently, to be compensated by any person (other than the Procurer(s)) as a result of the occurrence of a Non Natural Force Majeure Event (or Natural Force Majeure Event affecting the Procurer(s)) for which it has received compensation from the Procurer(s) pursuant to this Article 9, including without limitation, payments made which payments would not have been made in the absence of Article 4.9.1, the Procurer(s) shall be fully subrogated to the Seller's rights against that person to the extent of the compensation paid by the Procurer(s) to the Seller.

Provided that in case the Seller has actually received compensation from any person other than the Procurers as well as the Procurer(s) as a result of the occurrence of a Non Natural Force Majeure Event (or Natural Force Majeure Event affecting the Procurer(s)), then the Seller shall forthwith refund the compensation received by it from the Procurer(s) but only to the extent of the compensation received by the Seller from any person other than the Procurer(s).

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## 10 ARTICLE 10: CHANGE IN LAW

### 10.1 Definitions

In this Article 10, the following terms shall have the following meanings:

10.1.1 "Change in Law" means the occurrence of any of the following events after the date, which is seven (7) days prior to the Bid Deadline resulting into any additional recurring/non-recurring expenditure by the Seller or any income to the Seller:

- **the enactment, coming into effect, adoption, promulgation, amendment, modification or repeal (without re-enactment or consolidation) in India, of any Law, including rules and regulations framed pursuant to such Law;**
- **a change in the interpretation or application of any Law by any Indian Governmental Instrumentality having the legal power to interpret or apply such Law, or any Competent Court of Law;**
- **the imposition of a requirement for obtaining any Consents, Clearances and Permits which was not required earlier;**
- **a change in the terms and conditions prescribed for obtaining any Consents, Clearances and Permits or the inclusion of any new terms or conditions for obtaining such Consents, Clearances and Permits; except due to any default of the Seller;**
- **any change in tax or introduction of any tax made applicable for supply of power by the Seller as per the terms of this Agreement.**

but shall not include (i) any change in any withholding tax on income or dividends distributed to the shareholders of the Seller, or (ii) change in respect of UI Charges or frequency intervals by an Appropriate Commission or (iii) any change on account of regulatory measures by the Appropriate Commission including calculation of Availability.

### 10.2 Application and Principles for computing impact of Change in Law

10.2.1 While determining the consequence of Change in Law under this Article 10, the Parties shall have due regard to the principle that the purpose of compensating the Party affected by such Change in Law, is to restore through monthly Tariff Payment, to the extent contemplated in this Article 10, the affected Party to the same economic position as if such Change in Law has not occurred.

### 10.3 Relief for Change in Law

10.3.1 During Construction Period [*Insert if Seller is not a Trading Licensee*]

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As a result of any Change in Law, the impact of increase/decrease of Capital Cost of the Power Station in the Tariff shall be governed by the formula given below:

For every cumulative increase/ decrease of each Rupees .....  
[Insert amount] in the Capital Cost during the Construction Period, the  
increase/ decrease in Non Escalable Capacity Charges shall be an amount  
equal to .....[Insert amount] of the Non Escalable Capacity  
Charges. In case of Dispute, Article 14 shall apply.

It is clarified that the above mentioned compensation shall be payable to either Party, only with effect from the date on which the total increase/ decrease exceeds amount of Rs. .... [Insert Amount].

#### 10.3.2 During Operating Period

The compensation for any decrease in revenue or increase in expenses to the Seller shall be payable only if the decrease in revenue or increase in expenses of the Seller is in excess of an amount equivalent to 1% of the value of the Letter of Credit in aggregate for the relevant Contract Year.

10.3.3 For any claims made under Articles 10.3.1 and 10.3.2 above, the Seller shall provide to the Procurers and the Appropriate Commission documentary proof of such increase/ decrease in cost of the Power Station or revenue/ expense for establishing the impact of such Change in Law.

10.3.4 The decision of the Appropriate Commission, with regards to the determination of the compensation mentioned above in Articles 10.3.1 and 10.3.2, and the date from which such compensation shall become effective, shall be final and binding on both the Parties subject to right of appeal provided under applicable Law.

### 10.4 Notification of Change in Law

10.4.1 If the Seller is affected by a Change in Law in accordance with Article 10.1 and the Seller wishes to claim relief for such a Change in Law under this Article 10, it shall give notice to the Procurers of such Change in Law as soon as reasonably practicable after becoming aware of the same or should reasonably have known of the Change in Law.

10.4.2 Notwithstanding Article 10.4.1, the Seller shall be obliged to serve a notice to the Procurers under this Article 10.4.2, even if it is beneficially affected by a Change in Law. Without prejudice to the factor of materiality or other provisions contained in this Agreement, the obligation to inform the Procurers contained herein shall be material.

Provided that in case the Seller has not provided such notice, the Procurers shall have the right to issue such notice to the Seller.

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10.4.3 Any notice served pursuant to this Article 10.4.2 shall provide, amongst other things, precise details of:

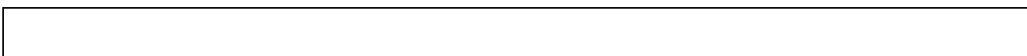
- (a) **the Change in Law; and**
- (b) **the effects on the Seller.**

## **10.5** Tariff Adjustment Payment on account of Change in Law

10.5.1 Subject to Article 10.2, the adjustment in monthly Tariff Payment shall be effective from:

- (i) the date of adoption, promulgation, amendment, re-enactment or repeal of the Law or Change in Law; or
- (ii) the date of order/ judgment of the Competent Court or tribunal or Indian Governmental Instrumentality, if the Change in Law is on account of a change in interpretation of Law.

10.5.2 The payment for Change in Law shall be through Supplementary Bill as mentioned in Article 8.8. However, in case of any change in Tariff by reason of Change in Law, as determined in accordance with this Agreement, the Monthly Invoice to be raised by the Seller after such change in Tariff shall appropriately reflect the changed Tariff.



11 ARTICLE 11: EVENTS OF DEFAULT AND TERMINATION

11.1 Seller Event of Default

11.1.1 The occurrence and continuation of any of the following events, unless any such event occurs as a result of a Force Majeure Event or a breach by Procurers of its obligations under this Agreement or a Procurer Event of Default, shall constitute a Seller Event of Default:

- (i) the failure to commence supply of power to the Procurers up to the Contracted Capacity, relevant to the Revised Scheduled Delivery Date(s) or the Scheduled Delivery Date, as the case may be, by the end of twelve (12) Months from its Scheduled Delivery Date or the Revised Scheduled Delivery Date, as the case may be, or
- (ii) after the Delivery Date, the interruption of power supply by the Seller for a continuous period of two (2) Months and such default is not rectified within thirty (30) Days from the receipt of first notice from the Procurer(s) in this regard, or
- (iii) After the Delivery Date, the ..... [Insert "Seller" if Seller is NOT a Trading Licensee, or insert "Developer" if Seller is a Trading Licensee] fails to achieve Normative Availability for a period of twelve (12) consecutive or non-consecutive Months within any continuous period of thirty six (36) Months; OR

or

- (iv) the Seller fails to make any payment (a) of an amount exceeding Rupees One (1) Crore in aggregate required to be made to Procurer(s) under this Agreement, within three (3) Months after the Due Date of undisputed invoice(s) /demand raised by the said Procurer(s) on the Seller or (b) of an amount up to Rupees One (1) Crore required to be made to Procurer(s) under this Agreement within six (6) Months after the Due Date of undisputed invoice(s)/ demand; or
- (v) any of the representations and warranties made by the Seller in Schedule 7 of this Agreement; being found to be untrue or inaccurate. Further, in addition to the above, any of representations made or the undertakings submitted by the Successful Bidder at the time of submission of the Bid being found to be breached or inaccurate, including but not limited to undertakings from its Parent Company/ Affiliates related to the minimum equity obligation and submission of the Contract Performance Guarantee;

Provided however, prior to considering any event specified under this sub-article to be an Event of Default, the Procurers shall give a notice to the Seller in writing of at least thirty (30) days, or

- (vi) if

**a) the Seller assigns, mortgages or charges or purports to assign, mortgage or charge any of its assets or rights related to the Power Station in contravention of the provisions of this Agreement; or**

**b) the Seller transfers or novates any of its rights and/ or obligations under this agreement, in a manner contrary to the provisions of this Agreement; except where such transfer**

**(i). is in pursuance of a Law; and does not affect the ability of the transferee to perform, and such transferee has the financial capability to perform, its obligations under this Agreement or**

**(ii). is to a transferee who assumes such obligations under this Agreement and the Agreement remains effective with respect to the transferee;**

(vii) if (a) the Seller becomes voluntarily or involuntarily the subject of any bankruptcy or insolvency or winding up proceedings and such proceedings remain uncontested for a period of thirty (30) days, or (b) any winding up or bankruptcy or insolvency order is passed against the Seller, or (c) the Seller goes into liquidation or dissolution or has a receiver or any similar officer appointed over all or substantially all of its assets or official liquidator is appointed to manage its affairs, pursuant to Law,

*Provided that a dissolution or liquidation of the Seller will not be a Seller Event of Default if*

such dissolution or liquidation is for the purpose of a merger, consolidation or reorganization and where the resulting company continues to **meet** the Qualification Requirements in terms of the RFQ till six (6) months after commencement of supply of power by the Seller, and retains creditworthiness similar to the Seller and expressly assumes all obligations of the Seller under this Agreement and is in a position to perform them; or

(viii) the Seller repudiates this Agreement and does not rectify such breach within a period of thirty (30) days from a notice from the Lead Procurer in this regard; or

(ix) except where due to any Procurer's failure to comply with its material obligations, the Seller is in breach of any of its material obligations pursuant to this Agreement or of any of the RFP Documents where the Procurers and Seller are parties, and such material breach is not rectified by the Seller within thirty (30) days of receipt of first notice in this regard given by the Lead Procurer on behalf of the Procurers.

(x) any direct or indirect change in the shareholding of the Seller in contravention of the terms of this Agreement; or

(xi) failure to renew or replace the Contract Performance Guarantee, as per the terms of this Agreement; or

(xii) occurrence of any other event which is specified in this Agreement to be a material breach/ default of the Seller.



## 11.2 Procurer Event of Default

11.2.1 The occurrence and the continuation of any of the following events, unless any such event occurs as a result of a Force Majeure Event or a breach by the Seller of its obligations under this Agreement or a Seller Event of Default, shall constitute the Event of Default on the part of defaulting Procurer:

- (i) a defaulting Procurer fails to meet any of its obligations, as specified in Article 4.3; or
- (ii) a defaulting Procurer fails to pay (with respect to a Monthly Bill or a Supplementary Bill) an amount exceeding fifteen (15%) of the undisputed part of the most recent Monthly/ Supplementary Bill for a period of ninety (90) days after the Due Date and the Seller is unable to recover the amount outstanding to the Seller through the Collateral Arrangement and Letter of Credit; or
- (iii) the defaulting Procurer repudiates this Agreement and does not rectify such breach even within a period of thirty (30) days from a notice from the Seller in this regard; or
- (iv) except where due to any Seller's failure to comply with its obligations, the defaulting Procurer(s) is/are in material breach of any of its obligations pursuant to this Agreement or of any of the other RFP Documents where the Procurer(s) and the Seller are Parties, and such material breach is not rectified by the defaulting Procurer within thirty (30) days of receipt of notice in this regard from the Seller to the Procurer(s); or
- (v) any representation and warranties made by the Procurer(s) in Schedule 7 of this Agreement. being found to be untrue or inaccurate. Provided however, prior to considering any event specified under this sub-article to be an Event of Default, the Seller shall give a notice to the Procurer in writing of at least thirty (30) days; or
- (vi) if
  - a Procurer becomes voluntarily or involuntarily the subject of any bankruptcy or insolvency or winding up proceedings and such proceedings remain uncontested for a period of thirty (30) days, or
  - any winding up or bankruptcy or insolvency order is passed against the Procurer(s), or
  - a Procurer goes into liquidation or dissolution or a receiver or any similar officer is appointed over all or substantially all of its assets or official liquidator is appointed to manage its affairs, pursuant to Law,

Provided that it shall not constitute a Procurer Event of Default, where such dissolution or liquidation of Procurer or such Procurer is for the purpose of a merger, consolidation or reorganization and where the resulting entity has

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the financial standing to perform its obligations under this Agreement and has creditworthiness similar to Procurer or such Procurer and expressly assumes all obligations of Procurer or such Procurer under this Agreement and is in a position to perform them; or;

- (vii) occurrence of any other event which is specified in this Agreement to be a material breach or default of the Procurer(s).

### 11.3 Procedure for cases of Seller Event of Default

**11.3.1 *Upon the occurrence and continuation of any Seller Event of Default under Article 11.1, Majority Procurers, through the Lead Procurer shall have the right to deliver to the Seller a notice with a copy to the Appropriate Commission and the Lenders' Representative (if substitution rights agreed to be provided) [To be inserted if substitution rights are demanded to be provided by the Seller], of their intention to terminate this Agreement (Procurer Preliminary Default Notice), which shall specify in reasonable detail, the circumstances giving rise to the issue of such notice.***

11.3.2 Following the issue of Procurer Preliminary Default Notice, the Consultation Period of ninety (90) days or such longer period as the Parties may agree, shall apply and it shall be the responsibility of the Parties to discuss as to what steps shall have to be taken with a view to mitigate the consequences of the relevant Event of Default having regard to all the circumstances.

11.3.3 During the Consultation Period, the Parties shall, save as otherwise provided in this Agreement, continue to perform their respective obligations under this Agreement.

11.3.4 Within a period of seven (7) days following the expiry of the Consultation Period unless the Parties shall have otherwise agreed to the contrary or the Seller Event of Default giving rise to the Consultation Period shall have ceased to exist or shall have been remedied, the Procurers may terminate this Agreement by giving a written Termination Notice of thirty (30) days to the Seller with a copy to the Appropriate Commission. *[Insert further in case the Seller chooses the option of Lender's substitution rights]* A copy of the Termination Notice shall be given to the Lenders' Representative. The Lenders may exercise or the Procurers may require the Lenders to exercise their substitution rights and other rights provided to them, if any, under Financing Agreements and the Procurers would have no objection to the Lenders exercising their rights if it is in consonance with provisions of Schedule 12. Alternatively, in case the Lenders do not

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exercise their rights as mentioned herein above, the Capacity Charge of the Seller shall be reduced by twenty percent (20%) for the period of Seller Event of Default.

11.3.5 Further, in addition to the reduction in Capacity Charges as per the provision in Article 11.3.4, the Seller shall be liable to pay to the Procurers, charges equivalent to twelve (12) months Capacity Charges calculated at Normative Availability. Such payment shall be made by the Seller to the Procurers within thirty (30) days of the termination of the Agreement. In case of inability of the Seller to make such payment within the stipulated time period of thirty (30) days, the Procurer(s) shall have the right to encash the Contract Performance Guarantee, if any available, as on that date and appropriate the proceeds of such encashment towards the payment due from the Seller. Any amount remaining unpaid on the part of the Seller shall be considered as a material breach and the Procurers shall have the right to enforce such claim as per the provisions of the Law.

## **11.4 Termination for Procurer Event of Default**

11.4.1 Upon the occurrence and continuation of any Procurer Event of Default pursuant to Article 11.2.1(ii) , the Seller shall follow the remedies provided under Article 8.5.2 or Article 8.5.2 or Article 8.5.4, as the case may be.

11.4.2 Without in any manner affecting the rights of the Seller under Article 11.4.1, on the occurrence of any Procurer Event of Default specified in Article 11.2 the Seller shall have the right to deliver to the Procurers, a Seller Preliminary Default Notice, which notice shall specify in reasonable detail the circumstances giving rise to its issue.

11.4.3 Following the issue of a Seller Preliminary Default Notice, the Consultation Period of ninety (90) days or such longer period as the Parties may agree, shall apply and it shall be the responsibility of the Parties to discuss as to what steps shall be taken with a view to mitigate the consequences of the relevant Event of Default having regard to all the circumstances.

11.4.4 During the Consultation Period, the Parties shall continue to perform their respective obligations under this Agreement.

11.4.5 After a period of seven (7) days following the expiry of the Consultation Period and unless the Parties shall have otherwise agreed to the contrary or the Procurer Event of Default giving rise to the Consultation Period shall have ceased to exist or shall have been remedied, the Seller shall be free to sell the Contracted Capacity and corresponding available capacity of the Procurer(s) committing Procurer Event of Default to any third party of the Seller's choice.

Provided such Procurer shall have the liability to make payments for Capacity Charges based on Normative Availability to the Seller for the period upto the Expiry Date, subject to maximum of three (3) years or half of the Term whichever is lower from the eighth day after the expiry of the Consultation Period.

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Provided further that in such period, in case the Seller is able to sell electricity to any third party at a price which is in excess of the Energy Charges, then such excess realization will reduce the Capacity Charge payments due from such Procurer(s).

For the avoidance of doubt, the above excess adjustment would be applied on a cumulative basis for such period. During such period, the Seller shall use its best effort to sell the Contracted Capacity and corresponding available capacity of Procurer or such Procurer generated or capable of being generated to such third parties at the most reasonable terms available in the market at such time, having due regard to the circumstances at such time and the pricing of electricity in the market at such time.

Provided further, the Seller shall ensure that sale of power to the shareholders of the Seller or any direct or indirect Affiliate of the Seller/ shareholders of the Seller, is not at a price less than the Tariff, without obtaining the prior written consent of such Procurer(s). Such request for consent would be responded to within a maximum period of three (3) days failing which it would be deemed that the Procurer has given his consent.

Provided further that at the end of such period, this Agreement shall automatically terminate but only with respect to such Procurer and thereafter, such Procurer shall have no further Capacity Charge liability towards the Seller.

Provided further, the Seller shall have the right to terminate this Agreement with respect to such Procurer(s) even before the expiry of such period provided on such termination, the future Capacity Charge liability of such Procurer(s) shall cease immediately.

## **11.5 Termination due to Force Majeure**

11.5.1 If the Force Majeure Event or its effects continue to be present beyond the period as specified in Article 4.7.3, either Party shall have the right to cause termination of the Agreement. In such an event, subject to the terms and conditions of the Financing Agreements, this Agreement shall terminate on the date of such Termination Notice. In case of such termination, the Contract Performance Guarantee shall be returned to the Seller as per the provisions of Article 3.8.

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**12**    *ARTICLE 12: LIABILITY AND INDEMNIFICATION*

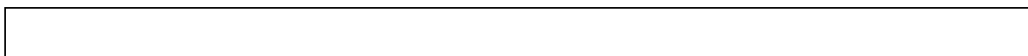
**12.1** Indemnity

12.1.1 The Seller shall indemnify, defend and hold Procurers harmless against:

- a) any and all third party claims, actions, suits or proceedings against the Procurers for any loss of or damage to property of such third party, or death or injury to such third party, arising out of a breach by the Seller of any of its obligations under this Agreement, except to the extent that any such claim, action, suit or proceeding has arisen due to a negligent act or omission, breach of this Agreement or breach of statutory duty on the part of Procurers, its contractors, servants or agents; and
- b) any and all losses, damages, costs and expenses including legal costs, fines, penalties and interest actually suffered or incurred by Procurers from third party claims arising by reason of:
  - (i) breach by the Seller of any of its obligations under this Agreement, (provided that this Article 12 shall not apply to such breaches by the Seller, for which specific remedies have been provided for under this Agreement) except to the extent that any such losses, damages, costs and expenses including legal costs, fines, penalties and interest (together to constitute “Indemnifiable Losses”) has arisen due to a negligent act or omission, breach of this Agreement or breach of statutory duty on the part of Procurers, its contractors, servants or agents, or
  - (ii) any of the representations or warranties of the Seller under this Agreement being found to be inaccurate or untrue.

12.1.2 Procurers shall indemnify, defend and hold the Seller harmless against:

- a) any and all third party claims, actions, suits or proceedings against the Seller, for any loss of or damage to property of such third party, or death or injury to such third party, arising out of a breach by Procurers of any of its obligations under this Agreement except to the extent that any such claim, action, suit or proceeding has arisen due to a negligent act or omission, breach of this Agreement or breach of statutory duty on the part of the Seller, its contractors, servants or agents; and
- b) any and all losses, damages, costs and expenses including legal costs, fines, penalties and interest (‘Indemnifiable Losses’) actually suffered or incurred by the Seller from third party claims arising by reason of
  - (i) a breach by Procurers of any of its obligations under this Agreement (Provided that this Article 12 shall not apply to such breaches by Procurers, for which specific remedies have been provided for under this Agreement.), except to the extent that any such Indemnifiable Losses have arisen due to a negligent act or omission, breach of this Agreement or breach of statutory duty on the part of the Seller, its contractors, servants or agents, or
  - (ii) any of the representations or warranties of the Procurers under this Agreement being found to be inaccurate or untrue.



## 12.2 Monetary Limitation of Liability

12.2.1 A Party ("Indemnifying Party") shall be liable to indemnify the other Party ("Indemnified Party") under this Article 12 for any indemnity claims made in a Contract Year only up to an amount of Rupees ..... (.....) [*Insert amount on the basis of Rs. 50,000/= per MW*]. With respect to the Procurers, the above limit of Rupees ..... (.....) shall be divided in the ratio of their Contracted Capacity existing on the date of the indemnity claim."

## 12.3 Procedure for claiming Indemnity

### 12.3.1 Third party claims

- a. Where the Indemnified Party is entitled to indemnification from the Indemnifying Party pursuant to Article 12.1.1(a) or 12.1.2(a), the Indemnified Party shall promptly notify the Indemnifying Party of such claim, proceeding, action or suit referred to in Article 12.1.1(a) or 12.1.2 (a) in respect of which it is entitled to be indemnified. Such notice shall be given as soon as reasonably practicable after the Indemnified Party becomes aware of such claim, proceeding, action or suit. The Indemnifying Party shall be liable to settle the indemnification claim within thirty (30) days of receipt of the above notice. Provided however that, if:
  - i) the Parties choose to contest, defend or litigate such claim, action, suit or proceedings in accordance with Article 12.3.1 (b) below; and
  - ii) the claim amount is not required to be paid/ deposited to such third party pending the resolution of the Dispute,

the Indemnifying Party shall become liable to pay the claim amount to the Indemnified Party or to the third party, as the case may be, promptly following the resolution of the Dispute, if such Dispute is not settled in favour of the Indemnified Party.

- b. The Indemnified Party may contest, defend and litigate a claim, action, suit or proceeding for which it is entitled to be Indemnified under Article 12.1.1(a) or 12.1.2(a) and the Indemnifying Party shall reimburse to the Indemnified Party all reasonable costs and expenses incurred by the Indemnified party. However, such Indemnified Party shall not settle or compromise such claim, action, suit or proceedings without first getting the consent of the Indemnifying Party, which consent shall not be unreasonably withheld or delayed.

An Indemnifying Party may, at its own expense, assume control of the defence of any proceedings brought against the Indemnified Party if it acknowledges its obligation to indemnify such Indemnified Party, gives such Indemnified Party prompt notice of its intention to assume control of the defence, and employs an independent legal counsel at its own cost that is reasonably satisfactory to the Indemnified Party.

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## 12.4 Indemnifiable Losses

12.4.1 Where an Indemnified Party is entitled to Indemnifiable Losses from the Indemnifying Party pursuant to Article 12.1.1(b) or 12.1.2(b), the Indemnified Party shall promptly notify the Indemnifying Party of the Indemnifiable Losses actually incurred by the Indemnified Party. The Indemnifiable Losses shall be reimbursed by the Indemnifying Party within thirty (30) days of receipt of the notice seeking Indemnifiable Losses by the Indemnified Party. In case of non payment of such losses after a valid notice under this Article 12.4, such event shall constitute a payment default under Article 11.

## 12.5 Infringement of Intellectual Property Rights

12.5.1

- a) The Seller shall, subject to the Procurers compliance with Article 12.5.1 b), indemnify and hold harmless the Procurers and its employees and officers from and against any and all suits, actions or administrative proceedings, claims, demands, losses, damages, costs, and expenses of whatsoever nature, including attorney's fees and expenses, which the Procurers may suffer as a result of any infringement or alleged infringement of any patent, utility model, registered design, trademark, copyright or other intellectual property right registered or otherwise existing at the date of the Agreement by reason of the setting up of the Power Station by the *[Insert "Seller" if Seller is NOT a Trading Licensee, or insert "Developer" if Seller is a Trading Licensee]*.

Such indemnity shall not cover any use of the Power Station or any part thereof other than for the purpose indicated by or to be reasonably inferred from the Agreement, any infringement resulting from the misuse of the Power Station or any part thereof, or any products produced in association or combination with any other equipment, plant or materials not supplied by the .....*[Insert "Seller" if Seller is NOT a Trading Licensee, or "Developer" if Seller is a Trading Licensee]*, pursuant to the Agreement.

- b) If any proceedings are brought or any claim is made against the Procurers arising out of the matters referred to in Article 12.5.1 (a), the Lead Procurer shall promptly give the Seller a notice thereof, and the Seller shall at its own expense take necessary steps and attend such proceedings or claim and any negotiations for the settlement of any such proceedings or claim. The Seller shall promptly notify the Lead Procurer of all actions taken in such proceedings or claims.
- c) If the Seller fails to notify the Lead Procurer within twenty-eight (28) days after receipt of such notice from the Lead Procurer under Article 12.5.1 b) above, that it intends to attend any such proceedings or claim, then the Lead Procurer shall be free to attend the same on their own behalf at the cost of the Seller. Unless the Seller has so failed to notify the Lead Procurer within the twenty eight (28) days period, the Lead Procurer shall make no admission that may be prejudicial to the defence of any such proceedings or claims.

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- d) The Lead Procurer shall, at the Seller's request, afford all available assistance to the Seller in attending to such proceedings or claim, and shall be reimbursed by the Seller for all reasonable expenses incurred in so doing.

#### 12.5.2

- a) The Procurers, subject to the Seller's compliance with Article 12.5.2 (b) shall indemnify and hold harmless the Seller and its employees, officers from and against any and all suits, actions or administrative proceedings, claims, demands, losses, damages, costs and expenses of whatsoever nature, including attorney's fees and expenses, which the Seller may suffer as a result of any infringement by the Procurers or alleged infringement of any patent, utility model, registered design, trademark, copyright or other intellectual property right registered..
- b) If any proceedings are brought or any claim is made against the Seller arising out of the matters referred to in Article 12.5.2 (a) the Seller shall promptly give the Lead Procurer a notice thereof, and the Lead Procurer shall at its own expense take necessary steps and attend such proceedings or claim and any negotiations for the settlement of any such proceedings or claim. The Lead Procurer shall promptly notify the Seller of all actions taken in such proceedings or claims.
- c) If the Lead Procurer fails to notify the Seller within twenty-eight (28) days after receipt of such notice from the Seller under Article 12.5.2 (b) above, that it intends to attend any such proceedings or claim, then the Seller shall be free to attend the same on its own behalf at the cost of the Procurer(s). Unless the Lead Procurer has so failed to notify the Seller within the twenty (28) days period, the Seller shall make no admission that may be prejudicial to the defence of any such proceedings or claim.
- d) The Seller shall, at the Procurers request, afford all available assistance to the Procurers in attending to such proceedings or claim, and shall be reimbursed by the Procurers for all reasonable expenses incurred in so doing.

## 12.6 Limitation on Liability

12.6.1 Except as expressly provided in this Agreement, neither the Seller nor Procurers nor their respective officers, directors, agents, employees or Affiliates (or their officers, directors, agents or employees), shall be liable or responsible to the other Party or its Affiliates, officers, directors, agents, employees, successors or permitted assigns or their respective insurers for incidental, indirect or consequential damages, connected with or resulting from performance or non-performance of this Agreement, or anything done in connection herewith, including claims in the nature of lost revenues, income or profits (other than payments expressly required and properly due under this Agreement), any increased expense of, reduction in or loss of power generation or equipment used therefore, irrespective of whether such claims are based upon breach of warranty, tort (including negligence, whether of the Procurers, the Seller or others), strict liability, contract, breach of statutory duty, operation of law or otherwise.

12.6.2 Procurers shall have no recourse against any officer, director or shareholder of the Seller or any Affiliate of the Seller or any of its officers, directors or shareholders for such claims excluded under this Article. The Seller shall have no recourse against any officer,

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director or shareholder of Procurers, or any Affiliate of Procurers or any of its officers, directors or shareholders for such claims excluded under this Article.

## **12.7 Duty to Mitigate**

12.7.1 The Parties shall endeavour to take all reasonable steps so as mitigate any loss or damage which has occurred under this Article 12.

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## 13 ARTICLE 13: ASSIGNMENTS AND CHARGES

### 13.1 Assignments

13.1.1 This Agreement shall be binding upon, and inure to the benefit of the Parties and their respective successors and permitted assigns. This Agreement shall not be assigned by any Party other than by mutual consent between the Parties to be evidenced in writing:

Provided that, such consent shall not be withheld if the Procurers seeks to transfer to any transferee all of its rights and obligations under this Agreement; and

(a) such transferee is either the owner or operator of all or substantially all of the distribution system of such Procurers and /or such transferee is a successor entity of the Procurers; and

(b) this Agreement and the other RFP Documents shall continue to remain valid and binding on such successor.

13.1.2 [*Insert in case the Seller chooses the option of Lender's substitution rights*] Seller shall be entitled to assign its rights and obligations under this Agreement in favor of the Selectee duly appointed pursuant to the terms of Schedule 12 of this Agreement.

### 13.2 Permitted Charges

13.2.1 Neither Party shall create or permit to subsist any encumbrance over all or any of its rights and benefits under this Agreement.

13.2.2 However, the Seller may create any encumbrance over all or part of the Receivables, Payment Mechanism or the RFP Documents in favour of the Lenders or the Lender's Representative on their behalf, as security for:

(a) amounts payable under the Financing Agreements; and

(b) any other amounts agreed by the Parties.

Provided that:

I the Lenders or the Lender's Representative on their behalf shall have entered into the Financing Agreements and agreed upon in writing to the provisions of Schedule 12 of this Agreement; and

II any encumbrances granted by the Seller in accordance with this Article 13.2.2 shall contain provisions pursuant to which the Lenders or the Lender's Representative on their behalf agrees unconditionally with the Seller acting for itself and as trustee of the Procurers to release from such encumbrances all of the right, title and interest to additional compensation so as to enable the Procurers to claim its right of subrogation. For the purposes of this Article, additional compensation shall mean the compensation that

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**the Seller is entitled, whether actually or contingently, to receive from the Procurers as well as compensated by any person other than the Procurers for the same event.**

13.2.3 Article 13.1.2 does not apply to :

- a) **liens arising by operation of law (or by an agreement evidencing the same) in the ordinary course of supply of power by the Seller;**
- b) **pledges of goods, the related documents of title and / or other related documents, arising or created in the ordinary course of supply of power by the Seller; or**
- c) **security arising out of retention of title provisions in relation to goods acquired in the ordinary course of supply of power by the Seller..**

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14 ARTICLE 14: GOVERNING LAW AND DISPUTE RESOLUTION

14.1 Governing Law

14.1.1 This Agreement shall be governed by and construed in accordance with the Laws of India. Any legal proceedings in respect of any matters, claims or disputes under this Agreement shall be under the jurisdiction of appropriate courts in the State of Rajasthan

14.2 Amicable Settlement and Dispute Resolution

14.2.1 Amicable Settlement

14.2.1.1 Either Party is entitled to raise any claim, dispute or difference of whatever nature arising under, out of or in connection with this Agreement ( "Dispute") by giving a written notice (Dispute Notice) to the other Party, which shall contain:

- (i) a description of the Dispute;
- (ii) the grounds for such Dispute; and
- (iii) all written material in support of its claim.

14.2.1.2 The other Party shall, within thirty (30) days of issue of Dispute Notice issued under Article 14.2.1.1, furnish:

- (i) counter-claim and defences, if any, regarding the Dispute; and
- (ii) all written material in support of its defences and counter-claim.

14.2.1.3 Within thirty (30) days of issue of Dispute Notice by any Party pursuant to Article 14.2.1.1 if the other Party does not furnish any counter claim or defence under Article 14.2.1.2 or thirty (30) days from the date of furnishing counter claims or defence by the other Party, both the Parties to the Dispute shall meet to settle such Dispute amicably. If the Parties fail to resolve the Dispute amicably within thirty (30) days from the later of the dates mentioned in this Article 14.2.1.3, the Dispute shall be referred for dispute resolution in accordance with Article 14.3.

14.3 Dispute Resolution

14.3.1 Dispute Resolution by the Appropriate Commission

14.3.1.1 Where any Dispute (i) arises from a claim made by any Party for any change in or determination of the Tariff or any matter related to Tariff or claims made by any Party which partly or wholly relate to any change in the Tariff or determination of any of such claims could result in change in the Tariff, or (ii) relates to any matter agreed to be referred to the Appropriate Commission under Articles 4.9.1, 10.3 and 15.3 ..... *[Insert "or Clause 12.9.4 of Schedule 12 hereof" in case Successful Bidder requests for substitution rights of the Lenders to be provided]*, such Dispute shall be submitted to adjudication by the Appropriate Commission. Appeal

against the decisions of the Appropriate Commission shall be made only as per the provisions of the Electricity Act, 2003, as amended from time to time.

14.3.1.2 The obligations of the Procurers under this Agreement towards the Seller shall not be affected in any manner by reason of inter-se disputes amongst the Procurers.

#### 14.3.2 **Dispute Resolution through Arbitration**

14.3.2.1 If the Dispute arises out of or in connection with any claims not covered in Article 14.3.1.1, such Dispute shall be resolved by arbitration under the Indian Arbitration and Conciliation Act, 1996 and the Rules of the Indian Council of Arbitration, in accordance with the process specified in this Article. In the event of such Dispute remaining unresolved as referred to in Article 14.2.1.3 hereof, any party to such Dispute may refer the matter to Registrar under the Rules of the Indian Council of Arbitration.

- i) *The Arbitration Tribunal shall consist of three (3) arbitrators to be appointed in accordance with the Indian Council of Arbitration Rules*
- ii) *The place of arbitration shall be Jaipur. The language of the arbitration shall be English.*
- iii) *The Arbitration Tribunal's award shall be substantiated in writing. The Arbitration Tribunal shall also decide on the costs of the arbitration proceedings and the allocation thereof.*
- iv) *The provisions of this Article shall survive the termination of this PPA for any reason whatsoever.*

### **14.4 Parties to Perform Obligations**

14.4.1 Notwithstanding the existence of any Dispute and difference referred to the Appropriate Commission or the Arbitration Tribunal as provided in Article 14.3 and save as the Appropriate Commission or the Arbitration Tribunal may otherwise direct by a final or interim order, the Parties hereto shall continue to perform their respective obligations (which are not in dispute) under this Agreement.



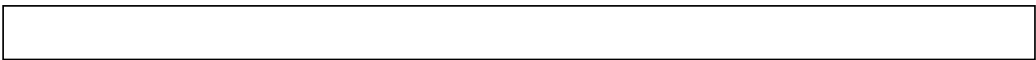
**15**    *ARTICLE 15: MISCELLANEOUS PROVISIONS*

**15.1** *Lead Procurer*

- 15.1.1 The Procurers hereby appoint and authorise “.....” *[Insert name of the Procurer with the highest Contracted Capacity]* [hereinafter referred to as the “Lead Procurer”] to represent all the Procurers for discharging the rights and obligations of the Procurers under this Agreement, which are required to be undertaken by all the Procurers. All the Procurers shall follow and be bound by the decisions of the Lead Procurer. Accordingly each Procurer agrees that any decision, communication, notice, action or inaction of the Lead Procurer on matters specified under this Agreement to be dealt with by the Lead Procurer shall be deemed to have been on its/his behalf and shall be binding on each of the Procurer. The Seller shall be entitled to rely upon any such action, decision or communication or notice from the Lead Procurer. It is clarified that provisions under this Article 15.1 are not intended to and shall not render the Lead Procurer liable to discharge Tariff Payments due to Seller from the other Procurers.
  
- 15.1.2 On the occurrence of any Event of Default specified in Article 11.2 by the Lead Procurer, the Seller may, at its option, within a period of fifteen (15) days from the date of issue of the Seller’s Preliminary Default Notice referred to in Article 11.4.2 and if the said default by the Lead Procurer subsists, specify in writing to all the Procurers that the ..... *[Insert name of the Procurer, which has the next highest Contracted Capacity]* shall be the new Lead Procurer, as per the provisions of this Article 15.1. In such a case, if the Seller so notifies, the new Lead Procurer shall, thereafter, act as Lead Procurer for the purposes of this Agreement, and the Lead Procurer earlier appointed under Article 15.1.1 shall automatically cease to be the Lead Procurer. It is clarified that all decisions taken by the ..... *[Insert Name of the Lead Procurer]* appointed under Article 15.1.1, in its capacity as Lead Procurer before such change, shall continue to be valid, in accordance with this Agreement.
  
- 15.1.3 Notwithstanding anything contained above, any decision which is required to be taken by the Procurers jointly under the provisions of this Agreement, shall be taken by all the Procurers and in case of difference amongst the Procurers, the said decision shall be taken by the Majority Procurers, as defined in Article 15.1.4 below.
  
- 15.1.4 Any decision taken by Procurers, who taken together constitute sixty five percent (65%) of the Contracted Capacity and constitute in number at least fifty percent (50%) of the total number of Procurers (hereinafter referred to as “Majority Procurers”), shall be binding on the Lead Procurer and all other Procurers. Majority Procurers shall also have the right to replace the Lead Procurer by any other Procurer of their choice. All decisions taken by the Majority Procurers in this Agreement shall be conveyed by the Lead Procurer.

**15.2** *Minimum Equity holding/ Equity Lock-In*

- 15.2.1 The minimum shareholding requirements specified in this Article shall apply to all of the entity/ entities which have made equity investment in the Seller and where the Seller is different from the Successful Bidder.



15.2.2 The aggregate equity share holding of the .....*[Insert “Lead Member” in case the Successful Bidder is a Bidding Consortium OR “the Successful Bidder” in case the Successful Bidder is a Bidding Company]* in the issued and paid up equity share capital of the Seller shall not be less than the following:

- c) **Fifty-one percent (51%) from the Effective Date up to a period of two (2) years after commencement of supply of power; and**
- d) **Twenty-six (26%) for a period of three (3) years thereafter.**

15.2.3 *[Insert in case of Successful Bidder being a Bidding Company]* All investors of the Seller, except the Bidding Company, shall be allowed to divest their equity as long as the the Bidding Company hold the minimum equity specified in Article 15.2.2.

15.2.4 *[Insert in case of Successful Bidder being a Bidding Consortium]* All Members of the Seller, except the Lead Member, shall be allowed to divest their equity as long as the the Lead Member hold the minimum equity specified in Article 15.2.2.

15.2.5 In case equity in the Seller is held by the Affiliate(s), Parent Company or Ultimate Parent Company, such Affiliate(s), Parent Company or Ultimate Parent Company shall be permitted to transfer its shareholding in the Seller to another Affiliate or Parent Company or Ultimate Parent Company. If any such shareholding entity, qualifying as an Affiliate /Parent Company/ Ultimate Parent Company, is likely to cease to meet the criteria to qualify as an Affiliate /Parent Company/ Ultimate Parent Company, the shares held by such entity shall be transferred to another Affiliate/ Parent Company/ Ultimate Parent Company.

15.2.6 All transfers of shareholding of the Seller by any of the entities referred to above, shall be after prior written permission from the Procurer(s).

15.2.7 For computation of effective Equity holding, the Equity holding of the Successful Bidder or its Ultimate Parent Company in such Affiliate(s) or Parent Company and the equity holding of such Affiliate(s) or Ultimate Parent Company in the Seller shall be computed in accordance with the example given below:

If the Parent Company or the Ultimate Parent Company of the Successful Bidder A directly holds thirty percent (30%) of the equity in the Seller , then holding of Successful Bidder A in the Seller shall be thirty percent (30%);

If Successful Bidder A holds thirty percent (30%) equity of the Affiliate and the Affiliate holds fifty percent (50%) equity in the Seller, then, for the purposes of ascertaining the minimum equity/ equity lock-in requirements specified above, the effective holding of Bidder A in the Seller shall be fifteen percent (15%), (i.e., 30%\* 50%)

15.2.8 The provisions as contained in this Article 15.2 shall override the terms of the consortium agreement submitted as part of the Bid.

15.2.9 *[Insert this Article in case the PPA is being signed by the Seller being a Trading Licensee]* The provisions contained in Article 15.2.1 to Article 15.2.7 shall not be



applicable if the Seller is a Trading Licensee or in case of a Seller being a bidding company and not forming a separate Project Company . However the Seller in such case shall ensure that similar provisions as contained in Article 15.2.1 to Article 15.2.7 are incorporated in the exclusive power purchase agreement submitted by the Seller. In such case, the aforesaid provisions shall be applicable with respect to ..... (Insert name of the majority investor in the Developer as specified in the power purchase agreement submitted as a part of the Selected Bid). The Seller shall ensure the compliance of the provisions mentioned in this Article 15.2.9. and any default on the part of the Seller in compliance of the same shall be an Event of Default in terms of Article 11. The Procurers shall have the right to verify the compliance of the provision as mentioned in this Article 15.2.9.

**15.3 Amendment**

15.3.1 This Agreement may only be amended or supplemented by a written agreement between the Parties and after obtaining the approval of the Appropriate Commission, where necessary.

**15.4 Third Party Beneficiaries**

15.4.1 This Agreement is solely for the benefit of the Parties and their respective successors and permitted assigns and shall not be construed as creating any duty, standard of care or any liability to, any person not a party to this Agreement.

**15.5 Waiver**

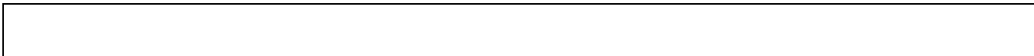
15.5.1 No waiver by either Party of any default or breach by the other Party in the performance of any of the provisions of this Agreement shall be effective unless in writing duly executed by an authorised representative of such Party:

15.5.2 Neither the failure by either Party to insist on any occasion upon the performance of the terms, conditions and provisions of this Agreement nor time or other indulgence granted by one Party to the other Parties shall act as a waiver of such breach or acceptance of any variation or the relinquishment of any such right or any other right under this Agreement, which shall remain in full force and effect.

**15.6 Entirety**

15.6.1 This Agreement and the Schedules are intended by the Parties as the final expression of their agreement and are intended also as a complete and exclusive statement of the terms of their agreement.

15.6.2 Except as provided in this Agreement, all prior written or oral understandings, offers or other communications of every kind pertaining to this Agreement or supply of power up to the Contracted Capacity under this Agreement to the Procurers by the Seller shall stand superseded and abrogated.



## 15.7 Confidentiality

15.7.1 The Parties undertake to hold in confidence this Agreement and RFP Documents and not to disclose the terms and conditions of the transaction contemplated hereby to third parties, except:

- a) to their professional advisors;
- b) to their officers, contractors, employees, agents or representatives, financiers, who need to have access to such information for the proper performance of their activities; or
- c) disclosures required under Law.

without the prior written consent of the other Parties.

15.7.2 Notwithstanding the provisions under Article 15.7.1, the Seller agrees and acknowledges that the Procurers may at any time, disclose the terms and conditions of the Agreement and the other RFP Documents to any person, to the extent stipulated under the Law or the Competitive Bidding Guidelines.

## 15.8 Affirmation

15.8.1 The Seller and Procurers, both affirm that:

- a) neither it nor its respective directors, employees, or agents has paid or undertaken to pay or shall in the future pay any unlawful commission, bribe, pay-off or kick-back; and
- b) it has not in any other manner paid any sums, whether in Indian currency or foreign currency and whether in India or abroad to the other Party to procure this Agreement, and the Seller and Procurers hereby undertake not to engage in any similar acts during the Term of Agreement.

## 15.9 Severability

15.9.1 The invalidity or enforceability, for any reason, of any part of this Agreement shall not prejudice or affect the validity or enforceability of the remainder of this Agreement, unless the part held invalid or unenforceable is fundamental to this Agreement.

## 15.10 Relationship of the Parties

This Agreement shall not be interpreted or construed to create an association, joint venture, or partnership or agency or any such other relationship between the Parties or to impose any partnership obligation or liability upon either Party and neither Party shall have any right, power or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as or be an agent or representative of, or to otherwise bind, the other Party.

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## 15.11 Counterparts

15.11.1 This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which collectively shall be deemed one and the same Agreement.

## 15.12 Notices

15.12.1 All notices or other communications which are required to be given under this Agreement shall be in writing and in the English language.

15.12.2 If to the Seller, all notices or other communications which are required must be delivered personally, by registered post or facsimile or any other method duly acknowledged to the addresses below:

**Address** :  
**Attention** :  
**Email** :  
**Fax. No.** :  
**Telephone No.** :

15.12.3 If to the Procurers, all notices or communications must be delivered personally or by registered post or facsimile or any other mode duly acknowledged to the address(es) below:

### (i) Jaipur Vidyut Vitran Nigam Ltd

**Address** :  
**Attention** :  
**Email** :  
**Fax. No.** :  
**Telephone No.** :

### (ii) Jodhpur Vidyut Vitran Nigam Ltd

**Address** :  
**Attention** :  
**Email** :  
**Fax. No.** :  
**Telephone No.** :

### (iii) Ajmer Vidyut Vitran Nigam Ltd

**Address** :  
**Attention** :  
**Email** :

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**Fax No.** :  
**Telephone No.** :

15.12.4 All notices or communications given by facsimile shall be confirmed by sending a copy of the same via post office in an envelope properly addressed to the appropriate Party for delivery by registered mail. All notices shall be deemed validly delivered upon receipt evidenced by an acknowledgement of the recipient, unless the Party delivering the notice can prove in case of delivery through the registered post that the recipient refused to acknowledge the receipt of the notice despite efforts of the postal authorities.

15.12.5 Any Party may by notice of at least fifteen (15) days to the other Party change the address and/or addresses to which such notices and communications to it are to be delivered or mailed.

### **15.13 Language**

15.13.1 All agreements, correspondence and communications between the Parties relating to this Agreement and all other documentation to be prepared and supplied under the Agreement shall be written in English, and the Agreement shall be construed and interpreted in accordance with English language.

15.13.2 If any of the agreements, correspondence, communications or documents are prepared in any language other than English, the English translation of such agreements, correspondence, communications or documents shall prevail in matters of interpretation.

### **15.14 Breach of Obligations**

15.14.1 The Parties acknowledge that a breach of any of the obligations contained herein would result in injuries. The Parties further acknowledge that the amount of the liquidated damages or the method of calculating the liquidated damages specified in this Agreement is a genuine and reasonable pre-estimate of the damages that may be suffered by the non-defaulting party in each case specified under this Agreement.

### **15.15 Nomination Restriction**

15.15.1 Notwithstanding anything contained to the contrary in this Agreement, wherever a reference is made to the right of the Procurers to nominate a third Party to receive benefits under this Agreement, such third Party shall have a financial standing comparable to that of the Procurer in question.

### **15.16 Commercial Acts**

15.16.1 The Procurers and Seller unconditionally and irrevocably agree that the execution, delivery and performance by each of them of this Agreement and any other RFP Documents to which it is a Party constitute private and commercial acts rather than public or governmental acts.

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## **15.17** Restriction of Shareholders / Owners' Liability

15.17.1 Parties expressly agree and acknowledge that none of the shareholders of the Parties hereto shall be liable to the other Parties for any of the contractual obligations of the concerned Party under this Agreement. Further, the financial liabilities of the shareholder/s of each Party to this Agreement, shall be restricted to the extent provided in the Indian Companies Act, 1956.

## **15.18** Taxes and Duties

- 15.18.1 The Seller shall bear and promptly pay all statutory taxes, duties, levies and cess, assessed/ levied on the Seller, contractors or their employees, that are required to be paid by the Seller as per the Law in relation to the execution of the Agreement and for supplying power as per the terms of this Agreement.
- 15.18.2 Procurers shall be indemnified and held harmless by the Seller against any claims that may be made against Procurers in relation to the matters set out in Article 15.18.1.
- 15.18.3 Procurers shall not be liable for any payment of, taxes, duties, levies, cess whatsoever for discharging any obligation of the Seller by the Procurers on behalf of Seller or its personnel, provided the Seller has consented in writing to Procurers for such work, which consent shall not be unreasonably withheld.

## **15.19** No Consequential or Indirect Losses

15.19.1 The liability of the Seller and the Procurers shall be limited to that explicitly provided in this Agreement.

Provided that notwithstanding anything contained in this Agreement, under no event shall the Procurers or the Seller claim from one another any indirect or consequential losses or damages.

## **15.20** Discretion

Except where this Agreement expressly requires a Party to act fairly or reasonably, a Party may exercise any discretion given to it under this Agreement in any way it deems fit.

## **15.21** Order of priority in application

In case of inconsistencies between the agreements executed between the Parties, applicable Law including rules and regulations framed thereunder, the order of priority as between them shall be the order in which they are placed below::

- applicable Law, rules and regulations framed thereunder,
- this Agreement

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## 15.22 Independent Entity

15.22.1 The Seller shall be an independent entity performing its obligations pursuant to the Agreement.

15.22.2 Subject to the provisions of the Agreement, the Seller shall be solely responsible for the manner in which its obligations under this Agreement are to be performed. All employees and representatives of the Seller or contractors engaged by the Seller in connection with the performance of the Agreement shall be under the complete control of the Seller and shall not be deemed to be employees, representatives, contractors of Procurers and nothing contained in the Agreement or in any agreement or contract awarded by the Seller shall be construed to create any contractual relationship between any such employees, representatives or contractors and the Procurers.

## 15.23 *Fraudulent and Corrupt Practices*

15.23.1 The Seller and their respective officers, employees, agents and advisers shall observe the highest standard of ethics during the subsistence of this Agreement. Notwithstanding anything to the contrary contained in the Agreement, the Procurers may terminate the Agreement without being liable in any manner whatsoever to the Seller, if it determines that the Seller has, directly or indirectly or through an agent, engaged in corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice in the Bid process. In such an event, the Procurers shall forfeit the bid bond, without prejudice to any other right or remedy that may be available to the Procurers hereunder or subsistence otherwise.

15.23.2 Without prejudice to the rights of the Procurers under Article 15.23.1 hereinabove and the rights and remedies which the Procurers may have under this Agreement, if a Seller is found by the Procurers to have directly or indirectly or through an agent, engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice during the Bid process, or after the issue of LOI or after the execution of the PPA, the Procurers may terminate the Agreement without being liable in any manner whatsoever to the Seller. Further, in such an event, the Procurers shall forfeit the Contract Performance Guarantee.

15.23.3 Further, the Seller shall not be eligible to participate in any tender or RFP issued by the Procurer(s) during a period of 2 (two) years from the date such Seller is found by the Procurer(s) to have directly or indirectly or through an agent, engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practices, as the case may be.

15.23.4 For the purposes of this Article 15.23, the following terms shall have the meaning hereinafter respectively assigned to them:

**(a) "corrupt practice" means (i) the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence the actions of any person connected with the Bid process (for avoidance of doubt, offering of employment to or employing or engaging in any manner whatsoever, directly or indirectly, any official of the Procurers who is or has been**

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associated or dealt in any manner, directly or indirectly with the Bid process or the LOI or has dealt with matters concerning the PPA or arising there from, before or after the execution thereof, at any time prior to the expiry of one year from the date such official resigns or retires from or otherwise ceases to be in the service of the Procurers, shall be deemed to constitute influencing the actions of a person connected with the Bid Process); or (ii) engaging in any manner whatsoever, whether during the Bid Process or after the issue of the LOI or after the execution of the PPA, as the case may be, any person in respect of any matter relating to the Power Station or the LOI or the PPA, who at any time has been or is a legal, financial or technical adviser of the Procurers in relation to any matter concerning the Project;

(b) “fraudulent practice” means a misrepresentation or omission of facts or suppression of facts or disclosure of incomplete facts, in order to influence the Bid process;

(c) “coercive practice” means impairing or harming, or threatening to impair or harm, directly or indirectly, any person or property to influence any person’s participation or action in the Bid process;

(d) “undesirable practice” means (i) establishing contact with any person connected with or employed or engaged by the Procurer(s) with the objective of canvassing, lobbying or in any manner influencing or attempting to influence the Bid process; or (ii) having a conflict of interest; and

(e) “restrictive practice” means forming a cartel or arriving at any understanding or arrangement among bidders with the objective of restricting or manipulating a full and fair competition in the Bid process

## 15.24 Compliance with Law

Despite anything contained in this Agreement but without prejudice to this Article, if any provision of this Agreement shall be in deviation or inconsistent with or repugnant to the provisions contained in the Electricity Act, 2003, or any rules and regulations made thereunder, such provision of this Agreement shall be deemed to be amended to the extent required to bring it into compliance with the aforesaid relevant provisions as amended from time to time.

IN WITNESS WHEREOF the Parties have caused the Agreement to be executed through their duly authorized representatives as of the date and place set forth above.

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For and on behalf of  
[Procurer]

Name, Designation and Address

Signature with seal

Witness:

1.

2.

For and on behalf of  
[Procurers]

Signature with seal

Witness:

1.

2.

For and on behalf of  
[Procurers]

Signature with seal

Witness:

1.

2.

For and on behalf of  
[Seller]

Name, Designation and Address

Signature with seal

Witness:

1.

2.

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**1** SCHEDULE 1: NAMES AND DETAILS OF THE PROCURER(S)

Sl. No.	Name of the Procurer(s)	Address of the Registered Office of Procurer(s)	Law under which incorporated	Contracted Capacity (MW)	Delivery Point <sup>7</sup>
<b>1</b>	<b>Jaipur Vidyut Vitran Nigam Ltd</b>		<b>Companies Act 1956</b>		
<b>2</b>	<b>Jodhpur Vidyut Vitran Nigam Ltd</b>		<b>Companies Act 1956</b>		
<b>3</b>	<b>Ajmer Vidyut Vitran Nigam Ltg</b>		<b>Companies Act 1956</b>		

<sup>7</sup> Procurer / Authorized Representative to insert the details of the Delivery Point(s) including the names of the place, district and State in which the Delivery Point(s) is located

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2 SCHEDULE 2: CALCULATION OF 'X' DAYS

[\(Refer Article 8.5.8\)](#)

Percentage of Monthly Invoice which is the subject of default under Article 8.4 as notified in the Notice ( issued under Article 8.5.2) relating to the present occurrence	Number of times a Notice has been issued under Article 8.5.2 to the defaulting Procurer prior to present occurrence			
	1 <sup>st</sup> time	2 <sup>nd</sup> time	3 <sup>rd</sup> time	4 <sup>th</sup> time <u>and onwards</u>
Less than 25%	x = 20 days	x = 25 days	x = 40 days	x = 60 days
25% to 30%	x = 20 days	x = 30 days	x = 45 days	x = 65 days
More than 30% to 35%	x = 20 days	x = 35 days	x = 50 days	x = 70 days
More than 35% to 40%	x = 20 days	x = 40 days	x = 55 days	x = 75 days
More than 40%	x = 20 days	x = 45 days	x = 60 days	x = <u>90</u> days

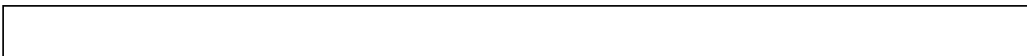
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**3** *SCHEDULE 3: AVAILABILITY FACTORS*

**3.1** The following matters shall be determined as per the provisions of the Grid Code and ABT:

- a) Availability declaration and calculation of Availability or Availability Factor;
- b) Requirement for spinning reserves;
- c) Procedure for revision of Availability;
- d) Consequences of failure to demonstrate capacity or misdeclarations of capacity;
- e) Scheduling and Dispatch; and
- f) Other matters which may be related to Availability or Availability Factor.



## 4 SCHEDULE 4: TARIFF

### 4.1 General

- i) The method of determination of Tariff Payments for any Contract Year during the Term of Agreement shall be in accordance with this Schedule.
- ii) The Tariff shall be paid in two parts comprising of Capacity Charge and Energy Charge as mentioned in Schedule 8 of this Agreement.
- iii) For the purpose of payments, the Tariff will be Quoted Tariff as specified in Schedule 8, duly escalated as provided in Schedule 6 for the applicable Contract Year .
- iv) The full Capacity Charges shall be payable based on the Contracted Capacity at Normative Availability and Incentive shall be provided for Availability beyond ninety percentage (90%)] as provided in this Schedule. In case of Availability being lower than the Normative Availability, the Capacity Charges shall be payable on proportionate basis in addition to the penalty to be paid by the Seller as provided in this Schedule.

### 4.2 Monthly Tariff Payment

#### 4.2.1 Components of Monthly Tariff Payment

The Monthly Bill for any Month in a Contract Year shall consist of the following:

- i) Monthly Capacity Charge payment in accordance with Clause 4.2.2 of Schedule 4;
- ii) Monthly Energy Charge for Scheduled Energy in accordance with Clause 4.2.3 of Schedule 4;
- iii) Incentive determined in accordance with Clause 4.2.4 of Schedule 4 (applicable on a cumulative basis and included in each Monthly Bill);
- iv) Penalty determined in accordance with Clause 4.2.5 of Schedule 4 (applicable on a cumulative basis and included in each Monthly Bill );

#### 4.2.2 Monthly Capacity Charge Payment (Applicable for all categories of power generation source)

4.2.2.1 The Monthly Capacity Charge payment for any Month m in a Contract Year n shall be calculated as below:

If CAA >= NA,

$$\text{FCm} = \sum_i (\text{NA} * \text{AFCyn} * \text{CC} * \text{L} * \text{Ncontract} / 24) - \sum \text{C(m-1)}$$

Else:

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$$\underline{\underline{FCm}} = \sum_i (\underline{\underline{AFCyn}} * \underline{\underline{AA}} * \underline{\underline{CC}} * \underline{\underline{L}} * \underline{\underline{Ncontract}} / 24) - \sum C(m-1)$$

where:

- a) FCm is the Capacity Charge payment for the Month m (in Rupees)
- b)  $\sum_i$  is the summation of all the relevant values separately for each Settlement Period from the start of the Contract Year “n” in which Month “m” occurs up to and including Month “m”
- c) AFCyn is the Capacity Charge and is sum of a) Payable Escalable Capacity Charges AEFCyn and b) Payable Non Escalable Capacity Charges ANFCyn for the Month “m” in the Contract Year “n” (in Rs/ kWh) in which such month “m” occurs and computed as mentioned hereunder:
- d) AEFCyn is the Payable Escalable Capacity Charges for Month “m” in the Contract Year “n”, expressed in Rs/ kWh and is equal to the Quoted Escalable Capacity Charges as provided in Schedule 8 for the first Contract Year and for subsequent Contract Years duly escalated by the following formula:

$$\underline{\underline{AEFCyn}} = \underline{\underline{QAEFCyn}} * p/q$$

where,

- i. QAEFCyn is the Quoted Escalable Capacity Charges (in Rs/ kWh) shall be taken as at the end of the previous Contract Year (n-1);
- ii. p is the Escalation Index as per Schedule 6 at the beginning of the Month “m”(expressed as a number);
- iii. q is the Escalation Index as per Schedule 6 (expressed as a number);
- e) ANFCyn is the Payable Non Escalable Capacity Charges for the Month “m”, expressed in Rupees/kWh and is equal to the Quoted Non Escalable Capacity Charges for the Contract Year in which such Month “m” occurs, as provided in Schedule 8;
- f) CAA is the cumulative Availability, as per REA, from the first day of the Contract Year “n” in which Month “m” occurs up to and including Month “m” (expressed in percentage);

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- g) AA is the Availability, as per REA, in the relevant Settlement Period (expressed as a percentage of Contracted Capacity in such Settlement Period), expressed as a percentage;
- h) CC is the Contracted Capacity in the relevant Settlement Period (expressed in kW);
- i) L is the number of minutes in relevant Settlement Period, as divided by total number of minutes in one hour, (expressed as hours);
- j) Ncontract is the number of hours of power supply in a day, contracted as per the PPA (24 in the case of base load and seasonal load requirement);
- k) NA Normative Availability; and
- l) ΣC(m-1) is the cumulative Capacity Charge payable from the first day of the Contract Year “n” in which Month “m” occurs up to and including Month “m-1” but not including Month “m”, (in Rupees).

**Provided, no Monthly Capacity Charges shall be paid for the Settlement Period during which the RLDC has not allowed the operation of the Power Station due to [Insert “Seller’s” if Seller is NOT a Trading Licensee, or “Developer’s” if Seller is a Trading Licensee] failure to operate it as per the provisions of Grid Code and such Settlement Period shall not be considered during calculation of Monthly Capacity Charge payment.**

**4.2.3 Monthly Energy Charges**

4.2.3.1 The Monthly Energy Charges to be paid to the Seller shall be determined considering the supply from the type of plant, as detailed hereunder:

**[Select in case of Seller has chosen domestic coal-based plants having captive coal block or linkage based coal, as source for its supply of power]**

4.2.3.2 The Monthly Energy Charges (in Rupees) for Month “m” shall be calculated as under:

$$\text{MEP}_m = \text{AEO}_m * \text{MEP}_n$$

where:

- a) **MEP<sub>m</sub> is the Monthly Energy Charges for Month m (in Rs.);**

b) **AEO<sub>m</sub>** is the Scheduled Energy for the Month m (in kWh); and

c) MEP<sub>n</sub> is the Energy Charge, in Rs/ kWh, and is expressed as below:

MEP<sub>n</sub> is the sum of the following: (i) Payable Escalable Energy Charges (MEEP<sub>n</sub>), (ii) Payable Escalable Inland Transportation Charges (MEITP<sub>n</sub>), (iii) Payable Non Escalable Energy Charges (MNEEP<sub>n</sub>) and (iv) Payable Non Escalable Inland Transportation Charges (MNEITP<sub>n</sub>) for the Contract Year “n” in which Month “m” occurs and computed as mentioned

hereunder:

where:

$$\underline{MEEP_n = QMEEP_n * p(EE)/q(EE)}$$

$$\underline{MEITP_n = QMEITP_n * p(ET)/q(ET)}$$

where:

a) QMEEP<sub>n</sub> for the first Contract Year in which month “m” occurs is the Quoted Escalable Energy Charges as per Schedule 8 and for subsequent Contract Years it shall be taken as at the end of the previous Contract Year (n-1);

b) QMEITP<sub>n</sub> for the first Contract Year in which month “m” occurs is the Quoted Escalable Inland Transportation Charges as per Schedule 8 and for subsequent Contract Years it shall be taken as at the end of the previous Contract Year (n-1);

c) p(EE) is the Escalation Index as per Schedule 6 at the beginning of Month “m” (expressed as a number);

d) q(EE) is the Escalation Index as per Schedule 6 (expressed as a number);

e) p(ET) is the Escalation Index for Inland Transportation Charges as per Schedule 6 at the beginning of Month “m” (expressed as a number);

f) q(ET) is the Escalation Index for Inland Transportation Charges as per Schedule 6 (expressed as a number);

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- g) MNEEPn is the Payable Non Escalable Energy Charges of the Contract Year “n” in which Month “m” occurs expressed in Rs/ kWh and is equal to the Quoted Non Escalable Energy Charges of the Contract Year “n” in which Month “m” occurs, as provided in Schedule 8; and
- h) MNEITPn is the Payable Non Escalable Inland Transportation Charges of the Contract Year “n” in which Month “m” occurs expressed in Rs/ kWh and is equal to the Quoted Non Escalable Inland Transportation Charges of the Contract Year “n” in which Month “m” occurs, as provided in Schedule 8.

[Select in case of Seller has chosen coal-based plants using imported coal, as generation source]

4.2.3.3 The Monthly Energy Charges (in Rupees) for Month “m” shall be calculated as under:

$$\mathbf{MEPm = AEOm * MEPn}$$

where:

- a) MEPm is the Monthly Energy Charges for Month m (in Rs.);
- b) AEOm is the Scheduled Energy for the Month m (in kWh); and
- c) MEPn is the Energy Charge, in Rs/ kWh, and is expressed as below:

MEPn is the sum of the following:

- (i) Payable Escalable Energy Charges (MEEPn),
- (ii) Payable Escalable Overseas Transportation Charges (MEOTPn),
- (iii) Payable Escalable Inland Transportation Charges (MEITPn),
- (iv) Payable Escalable Fuel Handling Charges (MEFHPn),
- (v) Payable Non Escalable Energy Charges (MNEEPn),
- (vi) Payable Non Escalable Overseas Transportation Charges (MNEOTPn),
- (vii) Payable Non Escalable Inland Transportation Charges (MNEITPn), and

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- (viii) Payable Non Escalable Fuel Handling Charges (MNEFHPn)  
for the Contract Year “n” in which Month “m” occurs and computed as  
mentioned hereunder:

$$\mathbf{MEEPn = QMEEPn * p/q * FX}$$

where:

- a) QMEEPn for the first Contract Year in which month “m” occurs is the Quoted Escalable Energy Charges as per Schedule 8 (in US\$/ kWh) and for subsequent Contract Years it shall be taken as at the end of the previous Contract Year (n-1);
- b) p is the Escalation Index at the beginning of the Month “m” and escalated as per Schedule 6;
- c) q is the Escalation Index as per Schedule 6;
- d) and
- e) FX shall be the simple average of SBI TT buying rate (for Rs/ US\$) for last fifteen (15) days prior to the first day of the Month “m” for which such exchange rates are published by SBI.

$$\mathbf{MEOTPn = QMEOTPn * p(OT) / q(OT) * FX}$$

where:

- a) QMEOTPn for the first Contract Year in which month “m” occurs is the Quoted Escalable Overseas Transportation Charges as per Schedule 8 (in US\$/ kWh) and for subsequent Contract Years it shall be taken as at the end of the previous Contract Year (n-1);
- b) p(OT) is the Escalation Index at the beginning of the Month “m” for Overseas Transportation Charges and escalated as per Schedule 6 (expressed as a number);
- c) q(OT) is the Escalation Index for Overseas Transportation Charges as per Schedule 6(expressed as a number); and
- d) FX shall be the simple average of SBI TT buying rate (for Rs/ US\$) for last fifteen (15) days prior to the first day of the Month “m” for which such exchange rates are published by SBI.

$$\mathbf{MEITPn = QMEITPn * p(IT) / q(IT)}$$

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where:

- e) QMEITP<sub>n</sub> for the first Contract Year in which month “m” occurs is the Quoted Escalable Inland Transportation Charges as per Schedule 8 (in Rs/ kWh) and for subsequent Contract Years it shall be taken as at the end of the previous Contract Year (n-1);
- f) p(IT) is the Escalation Index at the beginning of the Month “m” for Inland Transportation Charges and escalated as per Schedule 6 (expressed as a number);
- g) q(IT) is the Escalation Index for Inland Transportation Charges as per Schedule 6 (expressed as a number); and

•

$$\underline{\text{MEFHP}_n = \text{QMEFHP}_n * p(\text{FH}) / q(\text{FH})}$$

where:

- a) QMEFHP<sub>n</sub> for the first Contract Year in which month “m” occurs is the Quoted Escalable Fuel Handling Charges as per Schedule 8 (in Rs/ kWh) and for subsequent Contract Years it shall be taken as at the end of the previous Contract Year (n-1);
- b) p(FH) is the Escalation Index at the beginning of the Month “m” for Fuel Handling Charges and escalated as per Schedule 6 (expressed as a number); and
- c) q(FH) is the Escalation Index for Fuel Handling Charges as per Schedule 6 (expressed as a number).

$$\underline{\text{MNEEP}_n = \text{QMNEEP}_n * \text{FX}}$$

where:

- a) QMNEEP<sub>n</sub> is the Quoted Non Escalable Energy Charges of the Contract Year “n” in which Month “m” occurs expressed in US\$/ kWh and is equal to the Quoted Non Escalable Energy Charges of the Contract Year “n” in which Month “m” occurs, as provided in Schedule 8; and
- b) FX shall be the simple average of SBI TT buying rate (for Rs/ US\$) for last fifteen (15) days prior to the first day of the Month “m” for which such exchange rates are published by SBI.

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$$\underline{\text{MNEOTP}_n = \text{QMNEOTP}_n * \text{FX}}$$

where:

- a) QMNEOTP<sub>n</sub> is the Quoted Non Escalable Overseas Transportation Charges of the Contract Year “n” in which Month “m” occurs expressed in US\$/ kWh and is equal to the Quoted Non Escalable Overseas Transportation Charges of the Contract Year “n” in which Month “m” occurs, as provided in Schedule 8; and
- b) FX shall be the simple average of SBI TT buying rate (for Rs/ US\$) for last fifteen (15) days prior to the first day of the Month “m” for which such exchange rates are published by SBI.

MNEITP<sub>n</sub> is the Payable Non Escalable Inland Transportation Charges of the Contract Year “n” in which Month “m” occurs expressed in Rs/ kWh and is equal to the Quoted Non Escalable Inland Transportation Charges of the Contract Year “n” in which Month “m” occurs, as provided in Schedule 8.

MNEFHP<sub>n</sub> is the Payable Non Escalable Fuel Handling Charges of the Contract Year “n” in which Month “m” occurs expressed in Rs/ kWh and is equal to the Quoted Non Escalable Fuel Handling Charges of the Contract Year “n” in which Month “m” occurs, as provided in Schedule 8.

**[Select in case the Seller has chosen gas-based plants having domestic (pipeline) gas, as source for its supply of power]**

4.2.3.4 The Monthly Energy Charges (in Rupees) for Month “m” shall be calculated as under:

$$\underline{\text{MEP}_m = \text{AEOM}_m * \text{MEP}_n}$$

where:

- a) MEP<sub>m</sub> is the Monthly Energy Charges for Month m (in Rs.);
- b) AEOM<sub>m</sub> is the Scheduled Energy for the Month m (in kWh); and
- c) MEP<sub>n</sub> is the Energy Charge, in Rs/ kWh, and is expressed as below:

MEP<sub>n</sub> is the sum of the following:

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- (i) Payable Escalable Energy Charges (MEEP<sub>n</sub>),
- (ii) Payable Escalable Inland Transportation Charges (MEITP<sub>n</sub>),
- (iii) Payable Non Escalable Energy Charges (MNEEP<sub>n</sub>) and
- (iv) Payable Non Escalable Inland Transportation Charges (MNEITP<sub>n</sub>)  
for the Contract Year “n” in which Month “m” occurs and computed as  
mentioned hereunder:

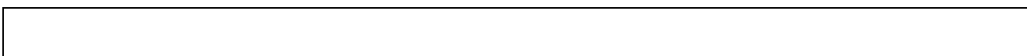
where:

$$\mathbf{MEEP_n = QMEEP_n * p(EE)/q(EE)}$$

$$\mathbf{MEITP_n = QMEITP_n * p(IT)/q(IT)}$$

where:

- a) QMEEP<sub>n</sub> for the first Contract Year in which month “m” occurs is the Quoted Escalable Energy Charges (in Rs/ kWh) as per Schedule 8 and for subsequent Contract Years it shall be taken as at the end of the previous Contract Year (n-1);
- b) QMEITP<sub>n</sub> for the first Contract Year in which month “m” occurs is the Quoted Escalable Inland Transportation Charges (in Rs/ kWh) as per Schedule 8 and for subsequent Contract Years it shall be taken as at the end of the previous Contract Year (n-1);
- c) p(EE) is the Escalation Index at the beginning of the Month “m” for Energy Charges and escalated as per Schedule 6 (expressed as a number);
- d) q(EE) is the Escalation Index for Energy Charges as per Schedule 6 (expressed as a number);
- e) p(IT) is the Escalation Index at the beginning of the Month “m” for Inland Transportation Charges and escalated as per Schedule 6 (expressed as a number); and
- f) q(IT) is the Escalation Index for Inland Transportation Charges escalated as per Schedule 6 (expressed as a number).



**MNEEPn** is the Payable Non Escalable Energy Charges of the Contract Year “n” in which Month “m” occurs expressed in Rs/ kWh and is equal to the Quoted Non Escalable Energy Charges of the Contract Year “n” in which Month “m” occurs, as provided in Schedule 8

**MNEITPn** is the Payable Non Escalable Inland Transportation Charges of the Contract Year “n” in which Month “m” occurs expressed in Rs/ kWh and is equal to the Quoted Non Escalable Inland Transportation Charges of the Contract Year “n” in which Month “m” occurs, as provided in Schedule 8.

[Select in case of Seller has chosen gas-based plants using imported R-LNG, as generation source]

4.2.3.5 The Monthly Energy Charges (in Rupees) for Month “m” shall be calculated as under:

$$\underline{\mathbf{MEPm = AEOm * MEPn}}$$

where:

- a) MEPm is the Monthly Energy Charges for Month m (in Rs.);
- b) AEOm is the Scheduled Energy for the Month m (in kWh);
- d) MEPn is the Energy Charge, in Rs/ kWh, and is expressed as below:

MEPn is the sum of the following:

- (i) Payable Escalable Energy Charges (MEEPn),
- (ii) Payable Escalable Overseas Transportation Charges (MEOTPn),
- (iii) Payable Escalable Inland Transportation Charges (MEITPn),
- (iv) Payable Escalable Fuel Handling Charges (MEFHPn),
- (v) Payable Non Escalable Energy Charges (MNEEPn),
- (vi) Payable Non Escalable Overseas Transportation Charges (MNEOTPn)

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(vii) Payable Non Escalable Inland Transportation Charges (MNEITPn), and

(viii) Payable Non Escalable Fuel Handling Charges (MNEFHPn)

for the Contract Year “n” in which Month “m” occurs and computed as mentioned hereunder:

$$\mathbf{MEEPn = QMEEPn * p(EE) / q(EE) * FX}$$

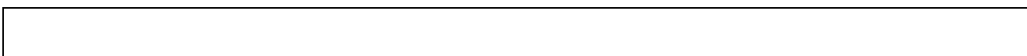
where:

- a) QMEEPn for the first Contract Year in which month “m” occurs is the Quoted Escalable Energy Charges as per Schedule 8 (in US\$/ kWh) and for subsequent Contract Years it shall be taken as at the end of the previous Contract Year (n-1);
- b) P(EE) is the Escalation Index at the beginning of the Month “m” for Energy Charges and escalated as per Schedule 6 (expressed as a number);
- c) q(EE) is the Escalation Index for Energy Charges as per Schedule 6(expressed as a number); and
- d) FX shall be the simple average of SBI TT buying rate (for Rs/ US\$) for last fifteen (15) days prior to the first day of the Month “m” for which such exchange rates are published by SBI.

$$\mathbf{MEOTPn = QMEOTPn * p(OT) / q(OT) * FX}$$

where:

- a) QMEOTPn for the first Contract Year in which month “m” occurs is the Quoted Escalable Overseas Transportation Charges as per Schedule 8 (in US\$/ kWh) and for subsequent Contract Years it shall be taken as at the end of the previous Contract Year (n-1);
- b) p(OT) is the Escalation Index at the beginning of the Month “m” for Overseas Transportation Charges and escalated as per Schedule 6 (expressed as a number);
- c) q(OT) is the Escalation Index for Overseas Transportation Charges as per Schedule 6 (expressed as a number); and



- d) FX shall be the simple average of SBI TT buying rate (for Rs/ US\$) for last fifteen (15) days prior to the first day of the Month “m” for which such exchange rates are published by SBI.

$$\underline{\mathbf{MEITPn = QMEITPn * p(IT) / q(IT)}}$$

where:

- a) QMEITPn for the first Contract Year in which month “m” occurs is the Quoted Escalable Inland Transportation Charges as per Schedule 8 (in Rs/ kWh) and for subsequent Contract Years it shall be taken as at the end of the previous Contract Year (n-1);
- b) p(IT) is the Escalation Index at the beginning of the Month “m” for Inland Transportation Charges and escalated as per Schedule 6 (expressed as a number); and
- c) q(IT) is the Escalation Index for Inland Transportation Charges as per Schedule 6 (expressed as a number).

$$\underline{\mathbf{MEFHPn = QMEFHPn * p(FH) / q(FH)}}$$

where:

- d) QMEFHPn for the first Contract Year in which month “m” occurs is the Quoted Escalable Fuel Handling Charges as per Schedule 8 (in Rs/ kWh) and for subsequent Contract Years it shall be taken as at the end of the previous Contract Year (n-1);
- e) p(FH) is the Escalation Index at the beginning of the Month “m” for Fuel Handling Charges and escalated as per Schedule 6 (expressed as a number); and
- f) q(FH) is the Escalation Index for Fuel Handling Charges as per Schedule 6 (expressed as a number).

$$\underline{\mathbf{MNEEPn = QMNEEPn * FX}}$$

where:

- a) QMNEEPn is the Quoted Non Escalable Energy Charges of the Contract Year “n” in which Month “m” occurs expressed in US\$/ kWh and is equal to the Quoted Indexed/ Non Escalable Energy Charges of the Contract Year “n” in which Month “m” occurs, as provided in Schedule 8

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- b) FX shall be the simple average of SBI TT buying rate (for Rs/ US\$) for last fifteen (15) days prior to the first day of the Month “m” for which such exchange rates are published by SBI

$$\mathbf{MNEOTP_n = QMNEOTP_n * FX}$$

where:

- a) QMNEOTP<sub>n</sub> is the Quoted Non Escalable Overseas Transportation Charges of the Contract Year “n” in which Month “m” occurs expressed in US\$/ kWh and is equal to the Quoted Non Escalable Overseas Transportation Charges of the Contract Year “n” in which Month “m” occurs, as provided in Schedule 8
- b) FX shall be the simple average of SBI TT buying rate (for Rs/ US\$) for last fifteen (15) days prior to the first day of the Month “m” for which such exchange rates are published by SBI

MNEITP<sub>n</sub> is the Payable Non Escalable Inland Transportation Charges of the Contract Year “n” in which Month “m” occurs expressed in Rs/ kWh and is equal to the Quoted Non Escalable Inland Transportation Charges of the Contract Year “n” in which Month “m” occurs, as provided in Schedule 8

MNEFHP<sub>n</sub> is the Payable Non Escalable Fuel Handling Charges of the Contract Year “n” in which Month “m” occurs expressed in Rs/ kWh and is equal to the Quoted Non Escalable Fuel Handling Charges of the Contract Year “n” in which Month “m” occurs, as provided in Schedule 8

[Select in case of Seller has chosen hydro-electric plant as the generation source]

- 4.2.3.6 The Monthly Energy Charges (in Rupees) for Month “m” shall be equal to the Quoted Energy Charges of the Contract Year “n” in which Month “m” occurs, as provided in Schedule 8

#### 4.2.4 **Contract Year Energy Incentive Payment**

- 4.2.4.1 If and to the extent the Availability in a Contract Year exceeds Normative Availability, an incentive at the rate of forty (40%) of the Quoted Non Escalable Capacity Charges (in Rs./kWh) for such Contract Year mentioned in Schedule 8 subject to a maximum of twenty five (25) paisa /kWh, shall be allowed on the energy (in kWh) corresponding to the Availability in excess of ninety percent (90%).

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4.2.5 **Contract Year Penalty for Availability below eighty percent (80%)] during the Contract Year**

4.2.5.1 In case the Availability for a Contract Year is less than eighty percent (80%)], the Seller shall pay a penalty at the rate of twenty percent (20%) of the simple average Capacity Charge (in Rs./kWh) for all months in the Contract Year applied on the energy (in kWh) corresponding to the difference between eighty percent (80%)],and Availability during such Contract Year.

**4.3 Deviation from the Schedule**

4.3.1 Variation between Scheduled Energy and actual energy at the Interconnection Point shall be accounted for through Unscheduled Interchange (UI) as per provisions of the Grid Code and ABT.

**4.4 Transmission/Wheeling Charges and RLDC/ SLDC Charges**

4.4.1 The payment of Transmission Charges / Wheeling Charges to the CTU/ STU, from the Injection Point to the Delivery Point shall be paid by the Seller and would be reimbursed by the Procurers.

4.4.2 The payment of the RLDC/ SLDC charges shall be the responsibility of the Procurers.

**4.5 Penalty and rights relating to minimum guaranteed quantity of Fuel [applicable in case of linkage coal-based Power Station or imported coal based Power Station or imported LNG based Power Station].**

4.5.1 In case [Insert “Seller” if Seller is NOT a Trading Licensee, or “Developer” if Seller is a Trading Licensee] has to pay penalty to the fuel supplier for not purchasing the minimum guaranteed quantity of Fuel mentioned in the Fuel Supply Agreement and if during that Contract Year, Availability of the Power Station of the .....[Insert “Seller” if Seller is NOT a Trading Licensee, or “Developer” if Seller is a Trading Licensee] is greater than the Minimum Offtake Guarantee but all the Procurers taken together have not scheduled energy corresponding to such Minimum Off-take Guarantee during that Contract Year, then Seller will raise an invoice for the lower of the following amounts, on the Procurers, :

- i) penalty paid to the fuel supplier under the Fuel Supply Agreement in that Contract Year, along with documentary proof for payment of such penalty, or***



*ii) an amount corresponding to twenty percent (20%) of cumulative Monthly Capacity Charge Payment (in Rs.) made by the Procurer for all the months in that Contract Year multiplied by (1- X/Y) where:*

*X is the Scheduled Energy during the Contract Year (in kWh); and*

*Y is the Scheduled Energy corresponding to Minimum Offtake Guarantee for the Procurer during the Contract Year (in kWh).*

The amount calculated as above shall be applicable for each Procurer who has scheduled energy less than energy corresponding to Minimum Offtake Guarantee and shall be in proportion to difference between energy scheduled by such Procurer assuming offtake corresponding to Minimum Offtake Guarantee and its Scheduled Energy.

*Provided, within ten (10) days of the end of each Month after the Delivery Date, the Seller shall provide a statement to the Procurers, providing a comparison of the cumulative Scheduled Energy for all previous Months during the Contract Year with the Minimum Offtake Guarantee of the Procurers. Further, such statement shall also list out the deficit, if any, in the Fuel offtake under the Fuel Supply Agreement, due to cumulative dispatch being less than the Minimum Offtake Guarantee. In case of a Fuel offtake deficit, within a period of fifteen (15) days from the date of receipt of the above statement from the Seller and after giving a prior written notice of at least seven (7) days to the Seller, the concerned Procurer shall have the right to avail such deficit at the same price at which such deficit fuel was available to the Seller under the Fuel Supply Agreement and to sell such deficit to third parties. In case the Procurer(s) exercises such right to avail Fuel equivalent to such deficit, there shall be no liability on the Procurer*





*for payment of penalty on account of Minimum Offtake Guarantee.*

**4.6** Tariff for the period prior to date of commencement of supply of power

4.6.1 The Tariff for the period prior to date of commencement of supply of power shall be the Quoted Tariff of the first Contract Year with escalation for relevant period only for energy charge.

**4.7** Settlement of Bills

4.7.1 The penalty of actual Availability shortfall during the Contract Year, deviation from the schedule, Transmission Charges and RLDC/ SLDC Charges, and penalty to be paid to fuel supplier will be settled as detailed in Clauses 4.2.2, 4.2.5, 4.3, 4.4 and 4.5 of this Schedule.

4.7.2 Notwithstanding anything contained in this agreement, no separate reimbursement shall be allowed for the cost of the secondary fuel.



**5 SCHEDULE 5: DETAILS OF GENERATION SOURCE AND SUPPLY OF POWER**

*(A) Details of generation source [to be reproduced exactly as in Format 4.13 of the Selected Bid of the Seller]*

**(Note: In case of Seller being an Trading Licensee, details in this format is to be furnished by the Bidder in relation to the supplier of power with whom the power purchase agreement has been executed by the Trading Licensee)**

Sl. No	Particulars	Details (as per Format 4.13 of the Selected Bid of Seller)			
8.	Location of power station (Specify place, district and state)				
9.	No. of existing/ proposed units and installed capacity of each unit (in MW)	Existing			
		Sl. No.	No. of Units	Installed Capacity	COD
		1.			
		2.			
		.....			
		Proposed			
		Sl. No.	No. of Units	Installed Capacity	Expected COD
		1.			
		2.			
		.....			
10.	<b>Primary Fuel</b>				
11.	<b>Dates of last major R&amp;M (unit-wise)</b>	<b>Applicable for existing units</b> S No. Date 1. 2. ...			
12.	<b>Duration of Fuel Supply Agreement(s) (FSA)</b>				
13.	<b>Quantum of power contracted with other purchasers, if any (in MW)</b>				
14.	<b>Details of surplus capacity (in MW)</b>				

*(B) Details of primary fuel [to be reproduced exactly as in Format 4.13 of the Selected Bid of the Seller]*

S. No	Particulars	Details (to be furnished by the Bidder)
1	Primary fuel	

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	(Insert as applicable: "Domestic coal/ Imported coal/ Domestic (pipeline) gas/ Imported gas (R-LNG)")	
2	<b>Fuel source</b> (Insert as applicable: "Coal India Limited (CIL) coal linkage/ domestic captive coal mine/ imported coal/ domestic (pipeline) gas/ imported gas (R-LNG)")	
3	<b>Fuel grade</b> (Applicable only in case of coal)	
4	Name of the CIL subsidiary from which coal is proposed to be sourced or name and location of the captive coal mine (as applicable)	
6	Bidder to insert the applicable price mechanism, based on whether the primary fuel is covered under: 4. Administered Price Mechanism ("APM"); or 5. Controlled and notified by an independent Regulator; or 6. Controlled and notified by the Government of India or Government of India Instrumentality. (Applicable only for gas)	

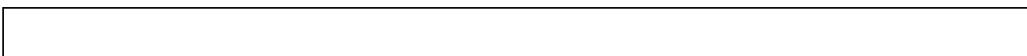
*(C) Details of Power Supply*

Sr. No	Particulars	
11.	Nature of Load	<b>Base Load</b>

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**6 SCHEDULE 6: ESCALATION INDEX**

- 6.1.1 The index (“Escalation Index”) to be applied for escalation of Quoted Escalable Capacity Charges, Quoted Escalable Energy Charges, Quoted Escalable Inland Transportation Charges, Quoted Escalable Overseas Transportation Charges and Quoted Escalable Fuel Handling Charges shall be computed by assuming that as on the date of the Bid Deadline (for Quoted Escalable Energy Charges, Quoted Escalable Inland Transportation Charges, Quoted Escalable Overseas Transportation Charges and Quoted Escalable Fuel Handling Charges) and Scheduled Delivery Date (for Quoted Escalable Capacity Charges) or Revised Scheduled Delivery Date, as the case may be, the value of such Escalation Index is 100. Thereafter for each Month after the Bid Deadline (for Quoted Escalable Energy Charges, Quoted Escalable Inland Transportation Charges, Quoted Escalable Overseas Transportation Charges and Quoted Escalable Fuel Handling Charges) and Scheduled Delivery Date (for Quoted Escalable Capacity Charges) or Revised Scheduled Delivery Date, as the case may be, the value of the Escalation Index shall be computed by applying the per annum inflation rate specified by CERC for payment of Escalable (or indexed) Capacity Charge and Escalable Energy Charge, as per the provisions of this Agreement.
- 6.1.2 For the avoidance of doubt, it is clarified that if the prevailing inflation rate for Quoted Escalable Energy Charges specified by CERC is 4.7% per annum, then at the end of the first Month after the Bid Deadline, the value of the Escalation Index shall be 100.3917 [i.e.  $100 * (1 + 0.047/12)$ ]. The value of the Escalation Index at the end of the N<sup>th</sup> Month after the Bid Deadline shall be calculated as:  $100 * (1 + N*0.047/ 12)$  for Quoted Escalable Energy Charges.. The value of the inflation rate shall be modified as and when specified by the CERC and the base value (100 in this case) shall be modified at the beginning of each Contract Year to be the Escalation Index at the end of the previous Contract Year. The value of the Escalation Index shall be calculated up to the fourth decimal point.
- 6.1.3 The different per annum escalation rates will be specified by CERC for the following, which shall be revised only at the end of every six months:
- a) Quoted Escalable Capacity Charges;
  - b) Quoted Escalable Energy Charges separately for captive-coal based, linkage based coal, imported coal, domestic (pipeline) gas and imported R-LNG;
  - c) Quoted Escalable Inland Transportation Charges (except for hydro plants);
  - d) Quoted Escalable Overseas Transportation Charges, separately for imported coal and imported R-LNG; and
  - e) Quoted Escalable Fuel Handling Charges, separately for imported coal and imported R-LNG.
- 6.1.4 In case due to any reason, CERC discontinues the publication of any of the inflation rate(s) mentioned above, the Procurers and the Seller shall replace the above inflation



rate(s) with inflation rate(s) which shall be computed on the same basis as was being used by CERC to estimate their notified inflation rate.

7 SCHEDULE 7: REPRESENTATION AND WARRANTIES

7.1 Representations and Warranties by the Procurer(s)

**[Insert “The Procurer” in case of single Procurer or “Each Procurer” in case of multiple Procurers] hereby represents and warrants to and agrees with the Seller as follows and acknowledges and confirms that the Seller is relying on such representations and warranties in connection with the transactions described in this Agreement:**

7.1.1

- i) The Procurer has all requisite powers and has been duly authorized to execute and consummate this Agreement;
- ii) This Agreement is enforceable against the Procurer in accordance with its terms;
- iii) The consummation of the transactions contemplated by this Agreement on the part of the Procurer will not violate any provision of nor constitute a default under, nor give rise to a power to cancel any charter, mortgage, deed of trust or lien, lease, agreement, license, permit, evidence of indebtedness, restriction, or other contract to which the Procurer is a party or to which the Procurer is bound, which violation, default or power has not been waived;
- iv) The Procurer is not insolvent and no insolvency proceedings have been instituted, nor threatened or pending by or against the Procurer;
- v) There are no actions, suits, claims, proceedings or investigations pending or, to the best of the Procurer’s knowledge, threatened in writing against the Procurer at law, in equity, or otherwise, and whether civil or criminal in nature, before or by, any court, commission, arbitrator or governmental agency or authority, and there are no outstanding judgments, decrees or orders of any such courts, commission, arbitrator or governmental agencies or authorities, which materially adversely affect its ability to comply with its obligations under this Agreement.
- vi) The quantum of Contracted Capacity of Procurer does not exceed the projected additional demand forecast for the next three (3) years, as required under the Bidding Guidelines. In case the quantum of Contracted Capacity of Procurer exceeds the additional demand forecast for the next three (3) years, the Procurer has already obtained the approval of the Appropriate Commission for the quantum of power proposed to be procured, as required under Para 3.1(i) of the Bidding Guidelines.

7.1.2 [Insert “The Procurer” in case of single Procurer or “Each Procurer” in case of multiple Procurers] makes all the representations and warranties above to be valid as on the date of this Agreement.



## 7.2 Representation and Warranties of the Seller

- 7.2.1 The Seller hereby represents and warrants to and agrees with the Procurer(s) as follows and acknowledges and confirms that the Procurer(s) is/are relying on such representations and warranties in connection with the transactions described in this Agreement:
- i) The Seller has all requisite power and has been duly authorized to execute and consummate this Agreement;
  - ii) This Agreement is enforceable against the Seller in accordance with its terms;
  - iii) The consummation of the transactions contemplated by this Agreement on the part of the Seller will not violate any provision of nor constitute a default under, nor give rise to a power to cancel any charter, mortgage, deed of trust or lien, lease, agreement, license, permit, evidence of indebtedness, restriction, or other contract to which the Seller is a party or to which the Seller is bound which violation, default or power has not been waived;
  - iv) The Seller is not insolvent and no insolvency proceedings have been instituted, or not threatened or pending by or against the Seller;
  - v) There are no actions, suits, claims, proceedings or investigations pending or, to the best of Seller's knowledge, threatened in writing against the Seller at law, in equity, or otherwise, and whether civil or criminal in nature, before or by, any court, commission, arbitrator or governmental agency or authority, and there are no outstanding judgments, decrees or orders of any such courts, commission, arbitrator or governmental agencies or authorities, which materially adversely affect its ability to supply power or to comply with its obligations under this Agreement.
  - vi) The Seller/ Successful Bidder has neither made any statement nor provided any information in his Bid, which was materially inaccurate or misleading at the time when such statement was made or information was provided. Further, all the confirmations, undertakings, declarations and representations made in the Bid are true and accurate and there is no breach of the same.
- 7.2.2 The Seller makes all the representations and warranties above to be valid as on the date of this Agreement.
- 7.2.3 In the event that any of the representations and warranties made by the Seller in the Article above not true or are incorrect, the occurrence of such event would amount to a Seller Event of Default under Article 11.1 of this Agreement and the Procurer shall have the right to terminate this Agreement in accordance with Article 11 of this Agreement.



**8**      *SCHEDULE 8: QUOTED TARIFF*  
**(Quoted Tariff from Format 4.10 of RFP of the Selected Bid to be inserted here)**

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**9 SCHEDULE 9: FORMAT OF THE CONTRACT PERFORMANCE GUARANTEE**

(To be on non-judicial stamp paper of appropriate value as per Stamp Act relevant to place of execution. Foreign entities submitting Bids are required to follow the applicable law in their country. To be provided separately in the name of the Procurer(s), in proportion to their Contracted Capacity, where applicable)

In consideration of the .....[Insert name of the Successful Bidder with address] agreeing to undertake the obligations under the PPA and the other RFP Documents and ..... [Insert name of Procurer](herein after referred to as Procurer), agreeing to execute the RFP Documents with the Successful Bidder for procurement of power on *long* term basis for meeting the requirements of the Procurer, the ..... [Insert name and address of the bank issuing the guarantee and address of the head office] (hereinafter referred to as "Guarantor Bank") hereby agrees unequivocally, irrevocably and unconditionally to pay to the Procurer at .....[Insert address of Procurer] forthwith on demand in writing from the Procurer or any officer authorized by it in this behalf, any amount up to and not exceeding Rupees ..... (Rs ..... ) only [Insert the amount of the bank guarantee computed on the basis of thirty (30) lakhs/MW with the respect to Contracted Capacity of the Procurer as per the terms of PPA on behalf of M/s. .... [Insert name of the Successful Bidder].

This guarantee shall be valid and binding on the Guarantor Bank up to and including .....[Insert date of validity of CPG] and shall in no event be terminable by notice or any change in the constitution of the Bank or the term of the PPA or by any other reasons whatsoever and our liability hereunder shall not be impaired or discharged by any extension of time or variations or alternations made, given, or agreed with or without our knowledge or consent, by or between parties to the respective agreement.

Our liability under this Guarantee is restricted to Rs. .... (Rs. .... only). Our Guarantee shall remain in force until ..... [Insert the date of validity of the CPG ]. The Procurer shall be entitled to invoke this Guarantee up to thirty (30) days of the last date of the validity of this Guarantee by issuance of a written demand to invoke this guarantee.

The Guarantor Bank hereby expressly agrees that it shall not require any proof in addition to the written demand from the Procurer, made in any format, raised at the above mentioned address of the Guarantor Bank, in order to make the said payment to the Procurer(s) .

The Guarantor Bank shall make payment hereunder on first demand without restriction or conditions and notwithstanding any objection by, ..... [Insert name of the Successful Bidder or the Seller] and/ or any other person. The Guarantor Bank shall not require the Procurer(s) to justify the invocation of this BANK GUARANTEE, nor shall the Guarantor Bank have any recourse against the Procurer(s) in respect of any payment made hereunder.

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**This BANK GUARANTEE shall be interpreted in accordance with the laws of India and the courts at ..... [Insert name(s) of city(ies)] shall have exclusive jurisdiction..**

**The Guarantor Bank represents that this BANK GUARANTEE has been established in such form and with such content that it is fully enforceable in accordance with its terms as against the Guarantor Bank in the manner provided herein.**

**This BANK GUARANTEE shall not be affected in any manner by reason of merger, amalgamation, restructuring, liquidation, winding up, dissolution or any other change in the constitution of the Guarantor Bank.**

**This BANK GUARANTEE shall be a primary obligation of the Guarantor Bank and accordingly the Procurer shall not be obliged before enforcing this BANK GUARANTEE to take any action in any court or arbitral proceedings against the Successful Bidder/Seller, to make any claim against or any demand on the Successful Bidder/Seller or to give any notice to the Successful Bidder/Seller or to enforce any security held by the Procurer or to exercise, levy or enforce any distress, diligence or other process against the Successful Bidder/Seller.**

**The Guarantor Bank acknowledges that this BANK GUARANTEE is not personal to the Procurer and may be assigned, in whole or in part, (whether absolutely or by way of security) by the Procurer to any entity to whom it is entitled to assign its rights and obligations under the PPA.**

**The Guarantor Bank hereby agrees and acknowledges that the Procurer shall have a right to invoke this Bank Guarantee either in part or in full, as it may deem fit.**

**Notwithstanding anything contained hereinabove, our liability under this Guarantee is restricted to Rs. .... crores (Rs. .... crores only) and it shall remain in force until .....[Date to be inserted is three (3) months after the Scheduled Delivery Date], with an additional claim period of thirty (30) days thereafter. This BANK GUARANTEE shall be extended from time to time for such period, as may be desired by ..... [Insert name of the Successful Bidder/Seller]. We are liable to pay the guaranteed amount or any part thereof under this Bank Guarantee only if the Procurer(s) serves upon us a written claim or demand.**

**In witness whereof the Bank, through its authorized officer, has set its hand and stamp on this ..... day of ..... at .....**

**Signature  
Name:  
Designation with Bank Stamp  
Attorney as per power of attorney No. ....**

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**For:**

..... [Insert Name of the Bank]

**Full Address:**

Dated this ..... day of ..... 20.....

**Witness:**

1. ....

**Signature**

**Name and Address**

2. ....

**Signature**

**Name and Address**

**Note: The Stamp Paper should be in the name of the Executing Bank.**

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**10** *SCHEDULE 10: SELECTED BID*

**[The Bid of the Successful Bidder to be inserted in this Schedule]**

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11 SCHEDULE 11: LIST OF BANKS

Scheduled Commercial Banks

SBI and Associates

28. State Bank of India
29. State Bank of Bikaner and Jaipur
30. State Bank of Hyderabad
31. State Bank of Indore
32. State Bank of Mysore
33. State Bank of Patiala
34. State Bank of Saurashtra
35. State Bank of Travancore

Nationalised Banks

1. Allahabad Bank
2. Andhra Bank
3. Bank of India
4. Bank of Maharashtra
5. Bank of Baroda
6. Canara Bank
7. Central Bank of India
8. Corporation Bank
9. Dena Bank
10. Indian Bank
11. Indian Overseas Bank
12. Oriental Bank of Commerce
13. Punjab National Bank
14. Punjab and Sind Bank

- 15. Syndicate Bank**
- 16. Union Bank of India**
- 17. United Bank of India**
- 18. UCO Bank**
- 19. Vijaya Bank**

## 2. Foreign Banks

- 19 BNP Paribas**
- 20 Citi Bank N.A.**
- 21 Deutsche Bank A.G.**
- 22 The Hongkong and Shanghai Banking Corporation Ltd.**
- 23 Standard Chartered Bank**
- 24 ABN Amro Bank N.V.**
- 25 UFJ Bank Ltd.**
- 26 Sumitomo Mitsui Banking Corporation**
- 27 Societe Generale**
- 28 Barclays Bank**
- 29 Bank of Novascotia**

## 3. Scheduled Private Banks

- 1 ING Vysya Bank Ltd.**
- 2 ICICI Bank Ltd.**
- 3 HDFC Bank Ltd.**
- 4 IDBI Bank Ltd**
- 5 Axis Bank**
- 6 Kotak Mahindra Bank**

*[Note: The Authorized Representative is authorized to modify the aforesaid list of Banks as deemed fit. Such modification shall not be construed as a change in standard bidding documents.]*

## 12 SCHEDULE 12: SUBSTITUTION RIGHTS OF THE LENDERS

*[This Schedule shall be inserted only if the Successful Bidder requests for substitution rights of the Lenders to be provided. Further this Schedule shall be removed in case the Seller is a Trading Licensee.]*

### 12.1 Substitution of the Seller

12.1.1 Subject to the terms of the PPA, upon occurrence of a Seller Event of Default under the PPA, the Lenders shall, have the right to seek substitution of the Seller by a Selectee for the residual period of the PPA, for the purposes of securing the payments of the Total Debt Amount from the Seller and performing the obligations of the Seller, in accordance with the provisions of this Schedule.

12.1.2 The Lenders may seek to exercise right of substitution by an amendment or novation of the PPA and other RFP Documents executed between Procurer(s) and the Seller in favour of the Selectee, the Procurer(s) and the Seller shall cooperate with the Lenders to carry out such substitution.

### 12.2 Procurers Notice of Default

12.2.1 The Procurer(s), who serve(s) the Preliminary Default Notice on the Seller as per this Agreement, shall simultaneously also issue a copy of the same to the Lenders.

### 12.3 Substitution Notice

12.3.1 In the event of failure of the Seller to rectify the Seller Event of Default giving rise to Preliminary Default Notice and on receipt of a copy of the Termination Notice by the Procurer(s), the Lenders, either on their own or through its representative (the “**Lenders’ Representative**”) shall be entitled to notify the Procurer(s) and the Seller of the intention of the Lenders to substitute the Seller by the Selectee for the residual period of the PPA (the “**Substitution Notice**”).

### 12.4 Interim operation of Power Station

12.4.1 On receipt of a Substitution Notice, no further action shall be taken by any Party to terminate the PPA, except under and in accordance with the terms of this Schedule 12 of this Agreement.

12.4.2 On issue of a Substitution Notice, the Lenders shall have the right to request the Procurer(s) to enter upon and takeover the Power Station for the interim

and till the substitution of the Selectee is complete and to otherwise take all such steps as are necessary for the continued operation and maintenance of the Power Station, including levy, collection and appropriation of payments thereunder, subject to, the servicing of monies owed in respect of the Total Debt Amount as per the Financing Agreements and the Seller shall completely cooperate in any such takeover of the Power Station by the Procurer(s). If the Procurer(s), at their sole and exclusive discretion agree to enter upon and takeover the Power Station, till substitution of the Selectee in accordance with this Agreement, such Procurer(s) shall be compensated for rendering such services in accordance with Clause 12.9.4 of this Schedule.

12.4.3 If the Procurer(s) refuse to takeover the Power Station on request by the Lenders in accordance with Clause 12.4.2 above, the Seller shall have the duty and obligation to continue to operate the Power Station in accordance with the PPA till such time as the Selectee is finally substituted.

12.4.4 The Lenders and the Procurer(s) shall, simultaneously have the right to commence the process of substitution of the Seller by the Selectee in accordance with these terms and the Seller hereby irrevocably consents to the same.

## **12.5 Process of Substitution of Seller**

12.5.1 The Lenders' Representative may, on delivery of a Substitution Notice notify the Procurer(s) and the Seller on behalf of all the Lenders about the Lenders' decision to invite and negotiate, at the cost of the Lenders, offers from third parties to act as Selectee, either through private negotiations or public auction and / or a tender process, for the residual period of the PPA. Subject to and upon approval of the [Insert "Procurer" or "Lead Procurer", referred to in Article 15.1 as applicable], such Selectee shall be entitled to receive all the rights of the Seller and shall undertake all the obligations of the Seller under the PPA and other RFP Documents executed between the Seller and the Procurer(s), in accordance with these terms of substitution.

12.5.2 The Lenders and the Seller shall ensure that, upon the [Insert "Procurer" in case of single Procurer or "Lead Procurer" in case of multiple Procurers] approving the Selectee, the Seller shall transfer absolutely and irrevocably, the ownership of the Power Station to such Selectee simultaneously with the amendment or novation of the PPA and other RFP Documents executed between the Seller and the Procurer(s) in favour of the Selectee as mentioned in Clause 12.1.2 of this Schedule.



## 12.6 Modality for Substitution

### Criteria for selection of the Selectee

12.6.1 The Lenders and / or the Lenders' Representative shall in addition to any other criteria that they may deem fit and necessary, apply the following criteria in the selection of the Selectee:

- (a) **if the Seller is proposed to be substituted prior to the Scheduled Delivery Date or Revised Scheduled Delivery Date, as the case may be, the Selectee shall possess the financial capability used to qualify bidders in the RFP stage (including the methodology prescribed therein) to perform and discharge all the residual duties, obligations and liabilities of the Seller under the PPA. If the Seller is proposed to be substituted during the Operation Period, this criteria shall not be applicable.**
- (b) **the Selectee shall have the capability and shall unconditionally consent to assume the liability for the payment and discharge of dues, if any, of the Seller to the Procurer(s) under and in accordance with the PPA and also payment of the Total Debt Amount to the Lenders upon terms and conditions as agreed to between the Selectee and the Lenders;**
- (c) **the Selectee shall have not been in breach of any agreement between the Selectee and any Bank or any Lender or between the Selectee and [Insert "the Procurer" or "any of the Procurers", as applicable], involving sums greater than Rupees ..... (Rs .... ) [Insert amount] at any time in the last two (2) years as on the date of the substitution notice to the Seller.**
- (d) **any other appropriate criteria, whereby continuity in the performance of the Selectee's obligations under the PPA is maintained and the security in favour of the Lenders under the Financing Agreements is preserved.**

## 12.7 Modalities

12.7.1 The following modalities shall be applicable to any substitution of the Seller by the Selectee pursuant to this Agreement:

12.7.2 The Lenders' Representative shall on behalf of the Lenders propose to the Procurer(s) (the "Proposal") pursuant to Clause 12.7.3 below, the name of the Selectee for acceptance, seeking:

**(a) grant of all the rights and obligations under the PPA and the other RFP Documents executed between the Procurer(s) and the Seller, to the Selectee (as substitute for the Seller);**

**(b) amendment of the PPA and the other RFP Documents executed between the Procurer(s) and the Seller, to the effect that the aforementioned grant to the Selectee, shall be such that the rights and obligations assumed by the Selectee are on the same terms and conditions for the residual period of the PPA as existed in respect of the Seller under the original PPA and the other RFP Documents executed between the Procurer(s) and the Seller; and**

**(c) the execution of new agreements as necessary, by the proposed Selectee for the residual period of the PPA on the same terms and conditions as are included in this Agreement.**

12.7.3 The Proposal shall contain the particulars and information in respect of the Selectee and the data and information as Procurer/ All Procurers (insert as applicable) may reasonably require. The Procurer(s) may intimate any additional requirement within thirty (30) days of the date of receipt of the Proposal.

12.7.4 The Proposal shall be accompanied by an unconditional undertaking by the Selectee that it shall, upon approval by the Procurer(s) of the Proposal:

**(a) observe, comply, perform and fulfill the terms, conditions and covenants of the PPA and all other RFP Documents executed between Seller and the Procurer(s) or a new PPA or respective RFP Document (in the case of the novation thereof), which according to the terms therein are required to be observed, complied with, performed and fulfilled by the Seller, as if such Selectee was the Seller originally named under the PPA; or the respective RFP Document; and**

**(b) be liable for and shall assume, discharge and pay the Total Debt Amount or then outstanding dues to the Lenders under and in accordance with the Financing Agreements or in any other manner agreed to by the Lenders and the Procurer(s) as if such Selectee was the Seller originally named under such Financing Agreements.**

12.7.5 At any time prior to taking a decision in respect of the Proposal received under Clause 12.7.2, the Procurer(s) may require the Lender/ Lenders' Representative to satisfy it as to the eligibility of the Selectee. The decision of the Procurer(s) as to acceptance or rejection of the Selectee, shall be made reasonably and when made shall be final, conclusive and binding on the Parties.

12.7.6 The Procurer/ All Procurers (insert as applicable) shall convey their approval or disapproval of such Proposal, through the Lead Procurer, if applicable, to the Selectee. Such decision shall be made by the Procurers at their reasonably exercised discretion within twenty one (21) days of:

- (a) **the date of receipt of the Proposal by the Procurer(s); or**
- (b) **the date when the last of further and other information and clarifications in respect of any data, particulars or information included in the Proposal requested by any of the Procurers under Clause 12.7.3 above is received;**

**whichever is later.**

**Notwithstanding anything to the contrary mentioned in this Agreement, the approval of the Procurer(s) or Lead Procurer for the Selectee shall not be withheld in case the Selectee meets the criteria mentioned in Clause 12.6.1.**

12.7.7 Upon approval of the Proposal and the Selectee by the Procurer(s), the Selectee mentioned in the Proposal shall become the Selectee hereunder.

12.7.8 Following the rejection of a Proposal, the Lenders and/ or the Lenders' Representative shall have the right to submit a fresh Proposal, proposing another Selectee (if the rejection was on the grounds of an inappropriate third party proposed as Selectee) within sixty (60) days of receipt of communication regarding rejection of the Selectee previously proposed. The provisions of this article shall apply *mutatis mutandis* to such fresh Proposal.

12.7.9 The substitution of the Seller by the Selectee shall be deemed to be complete upon the Selectee executing all necessary documents and writings with or in favour of the Seller, Procurer(s) and the Lenders so as to give full effect to the terms and conditions of the substitution, subject to which the Selectee has been accepted by the Lenders and the Procurer(s) and upon transfer of ownership and complete possession of the Power Station by the Procurer(s) or the Seller, as the case may be, to the Selectee. The Procurer(s) shall novate all the RFP Documents, which they had entered in to with the Seller in order to make the substitution of the Seller by the Selectee effective. The quantum and manner of payment of the consideration payable by the Selectee to the Seller

towards purchase of the Power Station and assumption of all the rights and obligations of the Seller under the PPA and other RFP Documents as mentioned in this Agreement shall be entirely between the Seller, Selectee and the Lenders and the Procurer(s) shall in no way be responsible to bear the same.

12.7.10 Upon the substitution becoming effective pursuant to Clause 12.7.9 above, all the rights of the Seller under the PPA shall cease to exist:

Provided that, nothing contained in this sub-article shall prejudice any pending / subsisting claims of the Seller against a Procurer or any claim of the Procurer(s) against the erstwhile Seller or the Selectee.

12.7.11 The Selectee shall, subject to the terms and conditions of the substitution, have a period of ninety (90) Days to rectify any breach and/ or default of the Seller subsisting on the date of substitution and required to be rectified and shall incur the liability or consequence on account of any previous breach and/ or default of the Seller.

12.7.12 The decision of the Lenders and the Procurer(s) in the selection of the Selectee shall be final and binding on the Seller and shall be deemed to have been made with the concurrence of the Seller. The Seller expressly waives all rights to object or to challenge such selection and appointment of the Selectee on any ground whatsoever.

12.7.13 The Lenders shall be solely and exclusively responsible for obtaining any and all consents/ approvals or cooperation, which may be required to be obtained from the Seller under this Agreement and the Procurer(s) shall not be liable for the same.

12.7.14 All actions of the Lenders' Representative hereunder shall be deemed to be on behalf of the Lenders and shall be binding upon them. The Lenders' Representative shall be authorised to receive payment of compensation and any other payments, including the consideration for transfer, if any, in accordance with the Proposal and the Financing Agreements and shall be bound to give valid discharge on behalf of all the Lenders.

## **12.8 Seller's Waiver**

12.8.1 The Seller irrevocably agrees and consents (to the extent to which applicable law may require such consent) to any actions of the Lenders, the Lender's Representative and the Procurer(s) or exercise of their rights under and in accordance with these terms.

- 12.8.2 The Seller irrevocably agrees and consents (to the extent to which applicable law may require such consents) that from the date specified in Clause 12.7.10, it shall cease to have any rights under the PPA or the Financing Agreements other than those expressly stated therein.
- 12.8.3 The Seller warrants and covenants that any agreement entered into by the Seller, in relation to the Power Station, shall include a legally enforceable clause providing for automatic novation of such agreement in favour of the Selectee, at the option of the Lenders or the Procurer(s). The Seller further warrants and covenants that, in respect of any agreements which have already been executed in relation to the Power Station and which lack a legally enforceable clause providing for automatic novation of such agreement, the Seller shall procure an amendment in the concluded agreement to incorporate such clause.

## **12.9 Interim Protection Of Service And Preservation Of Security**

### **Appointment of a Receiver**

- 12.9.1 In every case of the Lenders issuing a Substitution Notice and the Procurer(s) refusing to takeover the Power Station and the Seller failing to operate the Power Station in accordance with Clause 12.4.3 and the Procurer(s) not electing to act as Receiver as per Clause 12.9.2 hereof, the Lenders may institute protective legal proceedings for appointment of a receiver (the "Receiver") to maintain, preserve and protect the assets held as security by the Lenders if such right is granted under the terms of the Financing Agreements.
- 12.9.2 If the assets of the Power Station are, in the opinion of the Procurer(s), necessary and required for the operation and maintenance of the Power Station, the Procurer(s) shall be entitled to elect to act as the Receiver for the purposes of this Article and be entitled to maintain, preserve and protect the said assets by engaging an operator/service provider to act on their behalf and the Lenders and Seller hereby consent and agree to the same. Upon the Procurer(s) so intimating the Seller and the Lender's representative their desire to act as Receiver, the Seller and the Lender's representative shall co-operate with the Procurers to facilitate the same.
- 12.9.3 Upon appointment of the Court appointed Receiver or the Procurer(s) acting as Receiver, all the Receivables received by such Receiver shall be deposited by the Receiver in the bank account jointly designated by the Procurer(s) and the Lenders. The Receiver shall be responsible for protecting the assets in receivership and shall render a true and proper account of the receivership to the Lenders in accordance with the terms of its appointment.

12.9.4 When acting as a Receiver or operator in accordance with Clauses 12.9 or 12.4.2, Procurer(s) shall be entitled to be remunerated for such services as may be determined by the Appropriate Commission. Furthermore, when acting as a Receiver, the Procurer(s) shall not be liable to the Lenders, the Lenders' Representative, Seller or any third party for any default under the PPA, damage or loss to the Power Station or for any other reason whatsoever, except for wilful default of the Procurer(s).

## **12.10 Substitution Consideration**

12.10.1 The Lenders and Procurer(s) shall be entitled to appropriate any consideration received for the substitution of the Seller as hereinabove provided, from the Selectee towards the payment of Lenders' and the Procurers' respective dues, to the exclusion of the Seller.

12.10.2 The Seller shall be deemed to have nominated, constitutes and appoints the Lenders' Representative as its constituted attorney for doing all acts, deeds and things as may be required to be done for the substitution of the Seller by the Selectee pursuant to these terms.

## **12.11 Change in the Procurers or Lenders**

12.11.1 The Parties hereto acknowledge that during the subsistence of the PPA, it is possible that any Procurer(s) may cease to be a party to this Agreement by reason of termination of PPA vis-à-vis such Procurer and any Lender may cease to remain as a Lender by reason of repayment of the debt or otherwise. Further it may possible that any Lender may be substituted or a new Lender may be added. In the event of any Procurer or Lender ceasing to be a party to the PPA or Financing Agreement respectively, the term and conditions as prescribed in this Schedule shall cease to automatically apply to such Procurer or Lender as the case may be. Further, upon any entity being added as a Lender and in the event such entity is given the right to substitute the Seller under the Financing Agreement and then the contents of this Schedule shall be applicable to the exercise of such right by the said new entity.

**13** SCHEDULE 13: CAPITAL STRUCTURE SCHEDULE

(This shall need to be filled up in case Seller is not a Trading Licensee and on or before NTP)

DEFAULT ESCROW AGREEMENT

FOR

LONG TERM BASE LOAD PROCUREMENT OF POWER



DEFAULT ESCROW AGREEMENT

Dated [day, month], 2009

Between

[Insert Name of the Procurer] ("Procurer")

and

**[insert name of SELECTED BIDDER]**

("Seller")

and

**[insert name of the Escrow Agent]**

("Escrow Agent")

And

[insert name of Bank]

[insert name of Bank]

[insert name of Bank]

[insert name of Bank n]

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("Procurer's Banks")

FOR

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**Procurement of power on Long Term under Case – 1 for meeting the  
base load requirements of [Insert Name of the Procurer] in the state of  
Rajasthan in India.**

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**SCHEDULE 2 PROCURER’S FINANCING PARTIES 290**

This DEFAULT ESCROW AGREEMENT made this *[insert date]*, 2009 at \_\_\_\_\_ by and between:

1. **[Insert Name of the Procurer], a registered company incorporated under Companies Act 1956 having its office at \_\_\_\_\_ (hereinafter referred to as “Procurer” which expression shall unless repugnant to or inconsistent with the context, mean and include its successors and permitted assigns) of the FIRST PART; and**
2. **[Insert Name], a company incorporated under the Companies Act, 1956, with its registered office at *[insert address]*, (hereinafter referred to as the “Seller” which expression shall, unless repugnant to or inconsistent with the context, mean and include its successors and permitted assigns) of the SECOND PART; and**
3. ***[insert name of Default Escrow Agent]*, a *[insert nature of Default Escrow Agent]*, with its registered office at *[insert address]*, (hereinafter referred to as the “Escrow Agent” which expression shall, unless repugnant to or inconsistent with the context, mean and include its successors and permitted assigns) of the THIRD PART; and .**
4. **The Persons whose names and details are provided in Schedule 1 (hereinafter collectively referred to as the “Procurer’s Banks” or “Subsidiary Escrow Agents” which expression shall, unless repugnant to or inconsistent with the context, mean and include their respective successors and permitted assigns) of the FOURTH PART  
(Each of the parties of the FIRST, SECOND, THIRD and FOURTH PART above are individually referred to as a “Party” and collectively as the “Parties”).**

WHEREAS:

- A. **In accordance with the Competitive Bidding Guidelines, the distribution companies of Rajasthan namely Jaipur Vidyut Vitran Nigam Limited (JVVNL), Ajmer Vidyut Vitran Nigam Limited (AVVNL) and Jodhpur Vidyut Vitran Nigam Limited (JdVVNL) through their Authorised Representative had invited interested companies and/or Bidding Consortium and or any Consortium Member thereof (“Bidders”) to purchase the Request for Proposal (RFP) to participate in the bidding process for the selection of Successful Bidder(s) for procurement of power for ‘long term’ through tariff based competitive bidding process under Case – 1 bidding procedure for meeting their ‘base load’ power**

**requirements as per the terms and conditions of the RFP Document.**

- C. Pursuant to the said bidding process, \_\_\_\_\_ [Insert name of Selected Bidder] has been identified as the Selected Bidder to supply power to the Procurer for a Contracted Capacity of \_\_\_\_\_ [to be filled in based on Selected Bid] MW in accordance with the terms of PPA.**
- E. The Procurer has agreed to purchase the Electrical Output upto Contracted Capacity from the Seller and to pay the Seller the Tariff (as defined in the PPA) set out in Schedule 4 of the PPA and for such purposes, the Procurer and the Seller have entered into the PPA on or about the date hereof;**
- F. In terms of the said PPA, the Procurer is required to duly secure the Seller by establishing an arrangement for securing the Secured obligations (as defined hereinafter) and the Seller and the Procurer have agreed on a default escrow mechanism for the payments of Secured Obligations under the PPA;**
- G. The Procurer has appointed [insert name of Default Escrow Agent] as the Default Escrow Agent and each of the Procurer's Banks as the Subsidiary Escrow Agents for the purposes of this Agreement; and**
- H. The Procurer has issued standing and irrevocable instructions to the Subsidiary Escrow Agents to ensure the transfer of funds as provided herein.**

**NOW THEREFORE, in consideration of the foregoing and the respective covenants and agreements set forth in this Default Escrow Agreement and other considerations, the sufficiency and adequacy of which is hereby acknowledged, and intending to be legally bound hereby, the Parties agree as follows:**

A2: ARTICLE 1  
DEFINITIONS AND INTERPRETATION

## **1.1 Definitions**

**1.1.1 Capitalised terms used but not defined in this Agreement, shall, in so far as the context admits, have the same meaning in this Agreement as has been ascribed to them in the PPA.**

1.1.2 Additionally, the following terms shall have the meaning hereinafter respectively assigned to them:

**“Agreement” means this Default Escrow Agreement entered into between the Procurer, the Seller and the Default Escrow Agent and the modifications, amendments or alterations thereto from time to time;**

**“Business Day” shall mean any day, which is not a bank or public holiday in \_\_\_\_\_ Rajasthan;**

**“Charge Creation Date” shall have the meaning as ascribed thereto in Article 3.2.1 of this Agreement;**

**“Consumers” shall mean all the customers of the Procurer who are or who would be receiving electricity or energy or other related services from the Procurer and who are liable to make payments of any kind to the Procurer;**

**“Default Escrow Account” shall mean the default Escrow account opened with the Default Escrow Agent pursuant to Article 2.2.1 of this Agreement for the purposes of this Agreement;**

**“Distress Event” means an event where:**

- (a) a liquidator has been appointed by a court of competent jurisdiction in a proceeding for the winding up of the Default Escrow Agent; or**
- (b) a court of competent jurisdiction has made an order of winding up of the Default Escrow Agent other than for the purpose of amalgamation or reconstruction acceptable to the Seller, Procurer and the Lenders; or**
- (c) an Indian Government Instrumentality, statutory body or a court of competent jurisdiction has issued or adopted any law, rule regulation or order or initiated any proceeding or otherwise taken any action which reasonably may be expected to have a material adverse effect on the ability of the Default Escrow Agent to satisfy its obligations under this Agreement.**

**“Dispute” shall have the meaning attributed thereto in Article 9.9.2 of this Agreement;**

**“Default Escrow Agent” or “Escrow Agent” shall mean the Procurer’s Bank referred to in Article 2.1.1 of this Agreement and**

**who will represent all the Subsidiary Escrow Agents for the purposes of this Agreement and discharge obligations specified in this Agreement;**

**“Effective Date” shall have the same meaning as defined in PPA.**

**“Event of Default” shall have the meaning set out in Article 8.1 of this Agreement;**

**“Fortnight” shall mean each continuous period of not less than fifteen (15) days;**

**“Agreement to Hypothecate Cum Deed of Hypothecation” shall mean the Agreement to Hypothecate Cum Deed of Hypothecation dated [ ] entered into between the Procurer and the Seller, a copy of which has been provided to the Default Escrow Agent and each of the Subsidiary Escrow Agents on execution of this Agreement;**

**“Month” means a period beginning at 00:00 hours midnight on the first (1<sup>st</sup>) day of a calendar month and ending at 24:00 hours midnight on the last day of such calendar month;**

**“Power Purchase Agreement” or “PPA” shall mean the agreement titled ‘Power Purchase Agreement’ dated \_\_\_\_\_ entered into between the Procurer and the Seller, as it may be amended from time to time;**

**“Procurer Account” shall have the meaning attributed thereto in Article 2.2.3(b) of this Agreement;**

**“Procurer’s Financing Parties” shall mean the banks and/or financial institutions and/or power producers, which have provided or propose to provide financial assistance and/or facilities to the Procurer including in particular the Procurer’s Banks and/or supply or propose to supply electricity to the Procurer and who have, for the repayment and/or discharge of obligations of the Procurer due to them, by way of a legally binding agreement being provided, as on the Effective Date, *inter alia*, security by way of a charge on the Receivables of the Procurer, the list of such parties and the details of charge on the Receivables as on the Effective Date is annexed as Schedule 2;**

**“Procurer’s Banks” shall mean all the banks with whom the Procurer is maintaining and operating bank accounts and/or enjoy working capital facilities and who have been appointed by the Procurer as the Subsidiary Escrow Agents and instructed by the Procurer to receive Incremental Receivables deposited therein, and transfer the same, to the Default Escrow Account in accordance with the terms of this Agreement the list of such parties as existing on the Effective Date is provided herein as Schedule 1. Provided that, in case of addition or deletion or change in number of Procurer’s Banks and Procurer’s Bank Account as per Article 3.5 of this Agreement, the Procurer’s Banks shall also be deemed to be modified accordingly;**

**“Receivables” shall mean all of the present and future payments, obligations monies, claims, bills and any other property whatsoever which may from time to time be derived from or accrue or be offered or due to the Procurer in respect of the sale**

by the Procurer to the Consumers of electric capacity, energy and / or services or for any other reason whatsoever and all proceeds thereof;

“Security” shall have the meaning ascribed thereto in Article 2.3.1 of this Agreement;

“Incremental Receivables” shall mean the amount of the Receivables, in excess of the amounts which have already been charged or agreed to be charged in favour of the Procurer’s Financing Parties by way of a legally binding agreement, executed prior to the Effective Date, provided such charge of the Procurer’s Financing Parties shall be limited to the extent of their outstanding exposure (including commitments for exposure) as on the Effective Date;

“Procurer’s Bank Accounts” mean the bank accounts established and maintained in the Procurer’s Banks by the Procurer in which the Receivables are deposited;

“Secured Obligations” shall mean

- (a) the amounts due to the bank which had issued the Letter of Credit encashable by the Seller as per the terms of the PPA; and
- (b) obligation of the Procurer for making payments due under Article 11 and Article 14 of the PPA,

Provided that, the amounts due to the bank, which had issued the Letter of Credit, referred to in (a) above shall always have a priority over the amounts due and payable under (b);

“Seller Account” shall have the meaning attributed thereto in Article 2.2.3(a) of this Agreement;

“Subsidiary Escrow Accounts” shall mean the escrow accounts referred to in Article 2.2.2 hereof;

“Subsidiary Escrow Agents” shall mean the Procurer’s Banks..

## **1.2 Interpretation**

Unless the context otherwise requires, the provisions of Article 1.2 of the PPA shall be deemed to be incorporated herein and shall apply for the purpose of this Agreement.

A3: ARTICLE 2  
APPOINTMENT OF DEFAULT ESCROW AGENT  
AND ESTABLISHMENT OF ACCOUNTS

## **2.1 Default Escrow Agent**

### **2.1.1 Appointment as agent**

The Procurer has appointed [*insert name of Escrow Agent*] as the Default Escrow Agent for the purposes of this Agreement. The Seller hereby accepts the appointment of the [*insert name of Escrow Agent*], through its [*insert location*] branch, as the Escrow Agent and who shall act as agent of the Procurer and the



Seller in connection with this Agreement and the Agreement to Hypothecate Cum Deed of Hypothecation for the purposes and in accordance with the terms and provisions set forth herein and therein. The Subsidiary Escrow Agents accept the appointment of the Default Escrow Agent and agree to take instructions from him for the purposes of meeting their respective obligations under this Agreement.

#### **2.1.1A Appointment as Subsidiary Escrow Agent**

The Procurer has appointed the Procurer's Banks as the Subsidiary Escrow Agents for the purposes of this Agreement. The Seller hereby accepts such appointment. Subsidiary Escrow Agents shall act as agents of the Procurer and the Seller in connection with this Agreement and the Agreement to Hypothecate Cum Deed of Hypothecation for the purposes and in accordance with the terms and provisions set forth herein and therein.

#### **2.1.2 Acceptance of appointment**

Each of the Escrow Agent and the Subsidiary Escrow Agents hereby accept their appointment and agree to act as a Default Escrow Agent and Subsidiary Escrow Agents respectively.

#### **2.1.3 Primary obligation of the Default Escrow Agent**

Except as otherwise provided in this Agreement, the Default Escrow Agent shall hold and safeguard, the Default Escrow Account and all of the monies on deposit therein during the term of this Agreement and shall treat such monies as deposited by the Procurer with the Default Escrow Agent, to be held in trust by the Default Escrow Agent for the Seller and the Procurer and shall, in performing its functions and duties under this Agreement act as an agent for the Seller and the Procurer.

#### **2.1.4 Primary obligation of the Subsidiary Escrow Agents**

Except as otherwise provided in this Agreement, each of the Subsidiary Escrow Agents shall hold and safeguard, the Subsidiary Escrow Accounts and all of the monies on deposit therein during the term of this Agreement and shall treat such monies as deposited by the Procurer with the Subsidiary Escrow Agents, to be held in trust by the Subsidiary Escrow Agents for performing their functions and duties under this Agreement.

### **2.2 Establishment of Accounts**

#### **2.2.1 Establishment of the Default Escrow Account**

The Procurer shall, within seven (7) days of the Effective Date establish in his name a special, segregated and irrevocable cash

collateral account at the specified branch of the Default Escrow Agent which account shall be maintained at all times until the termination of this Agreement (hereinafter referred to as the "Default Escrow Account").

### **2.2.2 Establishment of the Subsidiary Escrow Accounts**

All bank accounts of the Procurer with the Procurer's Banks shall be deemed to have been designated by the Procurer as subsidiary escrow accounts (hereinafter referred to as the "Subsidiary Escrow Account/s") for the purposes of this Agreement.

### **2.2.3 Seller and Procurer Accounts**

No later than seven (7) days after the Effective Date:

- (a) the Seller shall establish and maintain in its name an account at the branch of the Default Escrow Agent (hereinafter referred to as the "Seller Account"); and
- (b) the Procurer shall establish and maintain in its name an account at the branch of the Default Escrow Agent or designate any of its then existing current account with the Default Escrow Agent (hereinafter referred to as the "Procurer Account")

until the termination of this Agreement.

## **2.3 Subsidiary Escrow Agents and Default Escrow Agent's obligations**

2.3.1 The Procurer has, pursuant to the Agreement to Hypothecate Cum Deed of Hypothecation agreed to grant a first priority charge/security interest in favour of the Seller on the Incremental Receivables (the "Security"). Upon the occurrence of an Event of Default mentioned in Article 8.1 (b), (d), (e), (f) and (g) in accordance with the terms of this Agreement, the Subsidiary Escrow Agents shall ensure that all the Incremental Receivables available in their respective Subsidiary Escrow Accounts are transferred to the Default Escrow Account. On the occurrence of an Event of Default mentioned in Article 8.1 (b), (d), (e), (f) and (g), the Default Escrow Agent shall ensure that the Incremental Receivables transferred by the Subsidiary Escrow Agents to the Default Escrow Account are transferred to the LC Account (as defined hereinafter) or the Seller Account or to the Procurer Account, in accordance with the terms of this Agreement. Immediately upon the occurrence of an Event of Default mentioned in Article 8.1 (b), (d), (e), (f) and (g), all Subsidiary Escrow Agents shall prepare a statement listing out the amount of Incremental Receivables available with them and shall send such statement to Default Escrow Agent. For such calculation of Incremental Receivables, each Subsidiary Escrow Agent shall assume that only the amounts available in their respective accounts are available for meeting their outstanding claims which have become due (but are unpaid). Provided such outstanding claims shall only relate to the legally binding

commitments which had been made prior to the Effective Date. The Procurers shall also immediately send to the Default Escrow Agent, a list of the amounts due but unpaid to any other Procurer Financing Parties provided such amounts shall only relate to the legally binding commitments which had been made prior to the Effective Date. On the basis of the information received, the Default Escrow Agent shall determine the total amount of Incremental Receivables available and shall thereafter send instructions to the Subsidiary Escrow Agents to release an amount equal to the Incremental Receivables in accordance with the provisions of Article 5.3. The above process shall be repeated on a daily basis till the continuance of the Event of Default under Articles 8.1 (b), (d), (e), (f) and (g).

- 2.3.2 The Default Escrow Agent and the Subsidiary Escrow Agents shall provide to the Procurer and the Seller, no later than the fifteen (15) Business Days from the end of each quarter, a statement of accounts detailing all deposits, transfers, disbursements or payments into and from the Default Escrow Account and the Subsidiary Escrow Accounts, respectively, during the previous quarter. During any period, following the delivery of a notice of the occurrence of an Event of Default and until delivery of notice that the Event of Default has been cured and is no longer continuing, the Default Escrow Agent and the Subsidiary Escrow Agent shall provide such statement of accounts to the Seller and the Procurer on a daily basis.
- 2.3.3 The Default Escrow Agent and the Subsidiary Escrow Agents shall, at all times, act and discharge its/their functions and obligations under this Agreement in accordance with the principle of protecting and enforcing the rights and interest of the Seller hereunder and the Security afforded to it herein for the full and timely performance by the Procurer of the Secured Obligations, in the manner contemplated herein.
- 2.3.4 The Subsidiary Escrow Agents shall ensure,
- (i) till the occurrence of any Event of Default mentioned in Article 8.1 (b), (d), (e), (f) and (g), the efficient and immediate transfer of Receivables and/or Incremental Receivables from the Subsidiary Escrow Account in any manner as required by the Procurer and in accordance with the provisions of this Agreement; and
  - (ii) upon the occurrence of any Event of Default mentioned in Article 8.1 (b), (d), (e), (f) and (g) , the transfer of Incremental Receivables from the Subsidiary Escrow Account strictly in accordance with Article 5 of this Agreement.
- 2.3.5 The Default Escrow Agent's duties and responsibilities shall be limited to those expressly set forth herein. Without affecting the rights and obligations of the Procurer or the Seller, the Default Escrow Agent shall not be subject to nor obligated to recognise,

except as contemplated herein, any other agreement or arrangement between the Procurer and the Seller or the Procurer and Subsidiary Escrow Agents, nor shall any such agreement or arrangement be deemed to be incorporated herein by reference thereto.

- 2.3.6 As soon as practicable but in no event later than fifteen (15) days from the Effective Date, the Procurer and the Seller shall deliver to each other and to the Default Escrow Agent and Subsidiary Escrow Agent, specimen signatures of their respective authorised officers duly attested by their banks for the purposes of this Agreement. The Procurer and the Seller shall have the right to change their respective authorised officers by delivering specimen signatures of their respective new authorised officers.
- 2.3.7 Notwithstanding anything contained in Section 171 and Section 221 of the Indian Contract Act, 1872, the Default Escrow Agent and Subsidiary Escrow Agents shall not have any lien or be entitled to assert a general claim on or against the monies in the Default Escrow Account or the Subsidiary Escrow Accounts respectively.

Procurer's Banks hereby confirm and agree to limit their charge on the Receivables to the extent of their outstanding exposure (including commitments for exposure) as on the Effective Date and cede their existing first priority charge, if any, on the Incremental Receivables, such ceding to be effective as of the Charge Creation Date.

## **2.4 Continuation**

Any corporation or association into which the Default Escrow Agent or the Subsidiary Escrow Agent(s) may be converted or merged, or with which it may be consolidated or to which it may sell or transfer its business and assets as a whole or substantially as a whole or any corporation or association resulting from any such conversion, sale, merger, consolidation or transfer to which it is a party, shall be and become the successor Default Escrow Agent or the successor Subsidiary Escrow Agent/s hereunder, without the execution or filing of any agreement, document or instrument or any further act, deed or conveyance on the part of the Parties, anything herein to the contrary notwithstanding:

Provided, however, the Seller shall be entitled, if it deems proper, not to accept any such successor Default Escrow Agent and take further steps for requiring replacement thereof in accordance with Article 9.8 of this Agreement.

## **2.5 Income Attribution**

All interest and other amounts in the Default Escrow Account or the Subsidiary Escrow Accounts shall be the income of the Procurer as per the provisions of the relevant tax laws of India.

A4: ARTICLE 3  
OBLIGATIONS OF THE PROCURER

### **3.1 Reaffirmation of Procurer obligations**

The Procurer covenants with the Seller that it will pay or discharge each of the Secured Obligations in accordance with the provisions of the PPA and this Agreement.

### **3.2 Creation of Charge**

3.2.1 The Procurer hereby agrees that at least forty five (45) days prior to the original or Revised Scheduled Delivery Date (“Charge Creation Date”), as the case may be, it shall create first charge over the Incremental Receivables in favour of the Seller and confirm effective as of the Charge Creation Date and until satisfaction of the Secured Obligations and the termination of this Agreement. The Procurer’s Financing Parties shall not have any charge over the Incremental Receivables or any part of the Security, and that such charge, if created in future, in favour of the Procurer’s Financing Parties or any other entity would be secondary and subordinate to the first charge created in favour of the Sellers pursuant to the Agreement to Hypothecate Cum Deed of Hypothecation entered into with the Seller. The Subsidiary Escrow Agents also agree to the provisions of this Article 3.2.1.

3.2.2 The Procurer shall also provide such other documents, certificates and agreements as the Seller may reasonably request in respect of creating a first priority charge over the Incremental Receivables, in favour of the Seller in accordance with Article 3.2.1 above.

### **3.3 Creation of further security interest**

The Procurer may create any other security interest subordinate and secondary to (i) the charge created in favour of the Seller over Incremental Receivables or (ii) any part thereof, in favour of any person other than the Seller for any reason whatsoever strictly in accordance with the provisions of this Agreement or the Agreement to Hypothecate Cum Deed of Hypothecation.

### **3.4 Changes in coverage**

3.4.1 No change shall be made or permitted by the Procurer in its business operations or collections policies which would result in the flow of Incremental Receivables as provided herein being reduced from what they would have been, had such change not been made or permitted as the case may be.

### **3.5 Changes in number of Procurer's Banks and Procurer's Bank Accounts**

i. If any changes occur in the Procurer's Bank Accounts, this Agreement shall be deemed to include all of such additional Incremental Receivables as received from such modified Procurer's Bank Accounts and such change in the Procurer's Bank Accounts shall be included in Schedule 1 accordingly.

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**Similarly, if there is any addition to the number of Procurer's Banks as provided in Schedule 1 hereof, such additional Procurer's Banks shall also be deemed to be appointed as the Subsidiary Escrow Agents of the Procurer for the purpose of this Agreement and the Procurers bank accounts with such banks shall be deemed as Subsidiary Escrow Accounts for the purposes of this Agreement.**

A5: ARTICLE 4  
DEPOSITS

#### **4.1 Procurer covenants**

- i.** The Procurer agrees and confirms that it has irrevocably instructed, or shall irrevocably instruct any additional Procurer's Banks (appointed under Article 3.5) immediately on its appointment as Procurer's Bank, and shall cause and direct each of the Subsidiary Escrow Agents to transfer on the occurrence of an Event of Default mentioned in Article 8.1 (b), (d), (e), (f) and (g) Incremental Receivables received by them directly into the Default Escrow Account.
- ii.** The Procurer agrees and confirms that it shall not take any actions inconsistent with instructions given under clause 4.1.1 or interfere in any way with the transfer of Incremental Receivables by the Subsidiary Escrow Agents directly into the Default Escrow Account as per the terms of this Agreement or deliver or cause to be delivered to the Subsidiary Escrow Agents any amendment, modification or supplement to such instructions or any additional or new instructions regarding payment of Incremental Receivables by them without the express written approval of the Seller, which amendment, modification or supplement thereto or any such additional or new instructions shall be effective only if consented to by a duly authorised representative of the Seller.

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#### **4.3 Routing of amounts into the accounts**

- 4.3.1** Any and all credits made into Subsidiary Escrow Accounts, the Default Escrow Account and the Procurer's Bank Accounts under this Agreement shall be irrevocable and all income or gain earned or realised on amounts on such credit in the Subsidiary Escrow Accounts, Default Escrow Account shall be treated for all purposes of this Agreement as part of the Default Escrow Account or Subsidiary Escrow Accounts, as the case may be.
- 4.3.2** The Procurer irrevocably directs the Default Escrow Agent, and the Default Escrow Agent agrees to deposit immediately upon receipt of all Incremental Receivables from the Subsidiary Escrow Agents directly into the Default Escrow Account, notwithstanding any instructions or directions to the contrary by any Subsidiary Escrow Agents, on and from the date of the occurrence of an Event of Default mentioned in Article 8.1 (b), (d), (e), (f) and (g), to be dealt with in the manner as specified in Article 5.

A6: ARTICLE 5  
OPERATION AND MANAGEMENT

OF THE DEFAULT ESCROW ACCOUNT

## **5.1 General**

All amounts deposited in the Default Escrow Account shall be applied by the Default Escrow Agent as provided for in this Article 5. All such amounts to the extent of the Incremental Receivables shall, among others, constitute a part of the Security and shall not constitute payment of any Secured Obligations until applied to the payment thereof as hereinafter provided.

## **5.2 Disbursements**

So long as any Event of Default mentioned in Article 8.1 (b), (d), (e), (f) and (g) has not occurred, the Subsidiary Escrow Agents shall ensure the efficient and immediate transfer of Receivables and/or Incremental Receivables from the Subsidiary Escrow Account in to the Procurer Account or in any manner as required by the Procurer.

In case of occurrence of any Event of Default mentioned in Article 8.1 (b), (d), (e), (f) and (g) and in case it is continuing, the Incremental Receivables shall be transferred from the Subsidiary Escrow Account and the Default Escrow Account in the manner specified in Article 5.3.

## **5.3 Procedures after occurrence of an event under Article 11.4.1.4 of the PPA**

- 5.3.1 (i) Upon the drawal by the Seller of the Letter of Credit as per Article 8.4.5 of the PPA and the failure on part of the Procurer to reinstate the Letter of Credit within a period of seven (7) days thereafter and provided the Seller has provided a written notice (with a copy to the Procurer) of the occurrence of such event to the Subsidiary Escrow Agents and Default Escrow Agent, all disbursements, transfers and withdrawals of Incremental Receivables from the Subsidiary Escrow Accounts pursuant to Article 5.2 above shall cease and all transfers and withdrawals of Incremental Receivables from the Subsidiary Escrow Accounts and the Default Escrow Account shall be governed and carried out by the Default Escrow Agent strictly and only in accordance with Article 5.3.2.

Provided that, if, after the Seller has exercised its right to make the drawal of the Letter of Credit in accordance with Article 8.4.5 of the PPA, the Procurer is able to reinstate the Letter of Credit within a period of seven (7) days thereafter, the Subsidiary Escrow Agent shall not be liable to transfer Incremental Receivables to the Default Escrow Account and



the Default Escrow Agent shall not be liable to transfer any funds from the Default Escrow Account into the LC Account or the Sellers Account, as relevant.

- (ii) In the event, the Seller is unable to draw on the Letter of Credit pursuant to the failure of the Procurer to establish the Letter of Credit as required under the provisions of Article 8.4.2 and Article 8.4.3 of the PPA, the Seller shall instruct the Subsidiary Escrow Agents and the Default Escrow Agent by giving a notice in writing with a copy to the Procurer to transfer the Incremental Receivables from the Subsidiary Escrow Accounts and thereon from the Default Escrow Account to the Seller Account to the extent of maximum of the amounts due to the Seller under Article 8.4.5 of the PPA, along with copies of the documents as required to be submitted by the Seller as per Article 8.4.5 of the PPA and the Subsidiary Escrow Agents and the Default Escrow Agent shall so transfer the funds, subject to the provisions of Article 5.3.5 hereof.

5.3.2 The Subsidiary Escrow Agents shall immediately after a period of seven (7) days from the drawal of the Letter of Credit by the Seller and subject to Clause 5.3.1(i) above, transfer the total Incremental Receivables from the Subsidiary Escrow Account to the Default Escrow Account. The Default Escrow Agent shall immediately, transfer such Incremental Receivables from the Default Escrow Account to an account specified by the bank which has issued the Letter of Credit ("LC Banker") for the purpose of reinstating the Letter of credit ("LC Account") and shall continue to transfer such Incremental Receivables in to such account for such period until the amount so transferred is adequate to reinstate the Letter of Credit as per the terms of the PPA.

5.3.3 During currency of the transfer of Incremental Receivables to the Default Escrow Account and from the Default Escrow Account to the LC Account or the Seller's Account, the Subsidiary Escrow Agent and the Default Escrow Agent shall not transfer money being part of such Incremental Receivables from the Subsidiary Escrow Account

and the Default Escrow Account to the Procurer Account, or its nominee except upon receiving written instructions from the Seller in this regard.

**5.3.4 Ommitted**

**5.3.5 The above provisions of Article 5.3.3 shall be subject to the provisions of this Article. Immediately upon transfer of adequate funds to cover the amounts due to the Seller under Article 8.4.5 of the PPA as per Article 5.3.1 (ii) or to meet the requirements of reinstatement of Letter of Credit as per Article 5.3.2, as the case may be, the transfer of amounts from the Subsidiary Escrow Account and the surplus monies in the Default Escrow Account to the Procurer Account shall recommence in accordance with Article 5.2 above.**

**5.3.6 In the event of any Dispute between the Procurer and the Seller arising out of this Agreement, the Procurer shall have recourse to the dispute resolution in accordance with the provisions mentioned in Article 9.9.2 of this Agreement:**

Provided that, pending the full and final resolution of such Dispute, the Subsidiary Escrow Agent and the Default Escrow Agent shall retain Incremental Receivables in the Subsidiary Escrow Account and the Default Escrow Account respectively and shall not allow transfer of Incremental Receivables to the extent of the amount under dispute, from the Subsidiary Escrow Account and the Default Escrow Account to the LC Account or the Procurer Account or the Seller Account.

**Upon the full and final conclusion of a dispute, either Party may bring the decision of the adjudicator to the notice of the Subsidiary Escrow Agents and the Default Escrow Agent who shall be bound by such decision and shall carry out such actions as are specified in the decision.**

A7: ARTICLE 6  
REPRESENTATION AND WARRANTIES

## **6.1 Representations and Warranties of the Procurer**

The Procurer hereby represents and warrants to the Seller and the Default Escrow Agent as of the date of this Agreement and at all times that:

- (a) the Procurer is a duly constituted entity and is validly existing under the laws of India and has all requisite legal power and authority to execute this Agreement and to carry out the terms, conditions and provisions contained in this Agreement;
- (b) this Agreement constitutes valid legal and binding obligations of the Procurer, enforceable in accordance with the terms of this Agreement;
- (c) to the best of the knowledge of the Procurer, there is no pending or threatened action, suit or proceeding before any court, tribunal or judicial or quasi judicial body or Government that could reasonably be expected to materially and adversely affect the financial condition or operations of the Procurer or the ability of the Procurer to perform its obligations under this Agreement or which purports to affect the legality, validity or enforceability of this Agreement;
- (d) the execution, delivery and performance of this Agreement by the Procurer have been duly authorised by all requisite actions and will not constitute a violation of:
  - (i) any statute, judgement, order, decree or regulation of any court, Indian Government Instrumentality or arbitral tribunal applicable or relating to the Procurer, its assets or its business; or
  - (ii) the Procurer's constitution or other documents or any indenture, contract or agreement to which it is Party or by which it or its property may be bound;
- (e) no hypothecation, lien, charge, security interest or other encumbrance shall exist over or shall be created over the Incremental Receivables, after the Charge Creation Date or otherwise than as permitted under this Agreement or the Agreement to Hypothecate Cum Deed of Hypothecation;
- (f) after the Charge Creation Date, the Procurer's Financing Parties do not and shall not have any first ranking security charge, security interest or other encumbrance over the Incremental Receivables, except a second<sup>nd</sup> and subordinate charge which may be created in their favour in accordance with Articles 3.2.1 and 3.3 above;

- (g) the schedules, annexes and other attachments attached hereto do not and will not contain any material misstatement of fact which is untrue or omit to state any fact, the omission of which makes or will make any of the statements therein, in the light of the circumstances under which they were or will be made, misleading in any respect;
- (h) all filings and other actions necessary to create, perfect and protect a first priority security interest and charge with respect to the Security have been duly made or taken or shall be duly made and taken before Commercial Operations Date of the first Unit of the Power Station and as of the said date, all such filings and actions shall be in full force and effect; and
- (i) the information relating to the Procurer's Financing Parties and Procurer's Banks given in the Schedules 1 and 2 of this Agreement, shall be complete and accurate in all material respects and all such accounts are held and made in good faith.

## **6.2 Representations and Warranties of the Default Escrow Agent**

The Default Escrow Agent shall represent and warrant to the Seller and the Procurer as of the Effective Date and at all times that:

- (a) the Default Escrow Agent is a scheduled commercial bank and duly constituted under the [*insert statute*] having its head office at [*insert address*] and its branch among others, at [*insert address*] and validly existing under the laws of India and has all requisite legal power and authority to enter into this Agreement and to perform its duties and obligations hereunder;
- (b) this Agreement constitutes the valid legal and binding obligations of the Default Escrow Agent enforceable in accordance with the terms of this Agreement;
- (c) there are no actions, suits or proceedings pending or threatened, against or affecting the Default Escrow Agent before any court or administrative body or arbitral tribunal that could reasonably be expected to affect adversely and materially the ability of the Default Escrow Agent to perform its duties and obligations under this Agreement;
- (d) the execution delivery and performance of this Agreement has been duly authorised by all requisite action, and will not constitute a violation of:
  - (i) any statute, judgement, order, decree or regulation of any court, Indian Government Instrumentality or arbitral tribunal applicable or relating to the Default Escrow Agent, its assets or its business; or

- (ii) the Default Escrow Agent's constitution or other documents or any indenture, contract or agreement to which it is a party or by which it or its property may be bound; and
- (e) the Default Escrow Agent is not aware of any other charge or security interest or encumbrance granted over the Incremental Receivables in favour of any other person other than the Seller.

### **6.3 Representations and Warranties of the Seller**

The Seller hereby represents and warrants to the Default Escrow Agent and the Procurer that:

- (a) it has been duly constituted under the Indian Companies Act, 1956 as amended and is validly existing under the laws of India and has all requisite legal power and authority to enter into this Agreement and to perform its duties and obligations hereunder;
- (b) this Agreement constitutes the valid, legal and binding obligations of the Seller enforceable in accordance with the terms of this Agreement; and
- (c) the execution, delivery and performance of this Agreement by the Seller has been duly authorised by all requisite action, and will not constitute a violation of:
  - (i) any statute, judgement, order, decree or regulation of any court, Indian Government Instrumentality or arbitration tribunal applicable or relating to the Seller, its assets or its business; or
  - (ii) the Seller's constitution or other documents or any indenture, contract or agreement to which it is Party or by which it is Party or by which it or its property may be bound.

### **6.4 Representations and Warranties of the Subsidiary Escrow Agents**

Each of the Subsidiary Escrow Agents represents and warrants to the Seller and the Procurer as of the Effective Date and at all times that:

- (a) the Subsidiary Escrow Agent is a commercial bank and duly constituted under the [*insert statute*] having its head office at [*insert address*] and its branch among others, at [*insert address*] and validly existing under the laws of India and has all requisite legal power and authority to enter into this Agreement and to perform its duties and obligations hereunder;
- (b) this Agreement constitutes the valid legal and binding obligations of the Subsidiary Escrow Agent enforceable in accordance with the terms of this Agreement;

- (c) there are no actions, suits or proceedings pending or threatened, against or affecting the Subsidiary Escrow Agent before any court or administrative body or arbitral tribunal that could reasonably be expected to affect adversely and materially the ability of the Subsidiary Escrow Agent to perform its duties and obligations under this Agreement;
- (d) the execution delivery and performance of this Agreement has been duly authorised by all requisite action, and will not constitute a violation of:

  - (i) any statute, judgement, order, decree or regulation of any court, Indian Government Instrumentality or arbitral tribunal applicable or relating to the Subsidiary Escrow Agent, its assets or its business;
  - or
  - (ii) the Subsidiary Escrow Agent's constitution or other documents or any indenture, contract or agreement to which it is a party or by which it or its property may be bound; and
- (e) the Subsidiary Escrow Agent is not aware of any other charge or security interest or encumbrance granted over the Incremental Receivables in favour of any other person other than the Seller.

A8: ARTICLE 7  
COVENANTS

## **7.1 Procurer Covenants**

The Procurer covenants that:

- (a) It shall create and maintain valid, perfected and enforceable first priority and ranking security interest and charge over all of the Security pursuant to the Agreement to Hypothecate Cum Deed of Hypothecation;
- (b) It shall procure all amendments, approvals, consents or waivers as may be required from the Procurer Financing Parties and any other financing parties from whom such amendments, approvals, consents or waivers are required, for the creation, maintenance and enforcement of the security interest contemplated hereby or by the Agreement to Hypothecate Cum Deed of Hypothecation in favour of the Seller;  

It shall not after the Charge Creation Date grant or create a first priority security interest, hypothecation, charge, lien, security interest or other encumbrance over the Incremental Receivables, throughout the term of this Agreement other than the Security created hereunder and created under the Agreement to Hypothecate Cum Deed of Hypothecation in favour of the Seller except in compliance with the provisions of this Agreement or the Agreement to Hypothecate Cum Deed of Hypothecation;
- (c) It shall obtain in a timely manner and maintain in full force and effect (or where appropriate, renew) all authorisations that are necessary and that are required to be in the name of the Procurer, in connection with:
  - (i) the execution, delivery, performance and observance by the Procurer of this Agreement; and
  - (ii) the validity, binding effect and enforceability of this Agreement;
- (e) it shall effect all registrations, recordings, filings, and notarisations, which are or may become necessary to enable the performance by the Procurer of its obligations under this Agreement and the Agreement to Hypothecate Cum Deed of Hypothecation;
- (f) it shall execute such further documents, instruments and register or record the same and take any other action necessary to give effect to this Agreement; and

- (g) it shall inform the Seller of any receipt of notice, claim, legal proceedings instituted against it which might affect the payment obligations as set out in the Agreement.**



A9: ARTICLE 8  
EVENTS OF DEFAULT

## **8.1 Events of Default**

For the purposes of this Agreement, the term “Event of Default” shall mean the occurrence or existence of any one or more of the following:

- (a) the Procurer being in breach of its material obligations under this Agreement or the Agreement to Hypothecate Cum Deed of Hypothecation;
- (b) the Procurer committing a Procurer Event of Default as mentioned in Article 11.1.1 (i) of the PPA;
- (c) any representation or warranty made by the Procurer in this Agreement shall be or shall have been incorrect in any material respect;
- (d) Upon the drawal by the Seller of the Letter of Credit as per Article 8 of the PPA and the failure on part of the Procurer to reinstate the Letter of Credit within a period of seven (7) days thereafter and provided the Seller has provided a written notice (with a copy to the Procurer) of the occurrence of such event to the Subsidiary Escrow Agents and Default Escrow Agent
- (e) the Seller is unable to draw on the Letter of Credit pursuant to the failure of the Procurer to establish the Letter of Credit as required under the provisions of Article 8 of the PPA and provided the Seller has provided a written notice (with a copy to the Procurer) of the occurrence of such event to the Subsidiary Escrow Agents and Default Escrow Agent;
- (f) Default by the Procurer for the repayment and/or discharge of obligations of the Procurer to any person under a legally binding agreement providing inter alia, security by way of a charge on the Incremental Receivables of the Procurer, provided such charge to such person enjoys a lower priority and ranking security interest to the Seller.

A10: ARTICLE 9  
MISCELLANEOUS

## **9.1 Expenses**

Except in cases specified in Articles 9.8.2 and 9.8.6 of this Agreement, the Seller and Procurer shall bear, in equal proportion, all the expenses of the Default Escrow Agent and each Subsidiary Escrow Agent regarding opening and maintaining the Default Escrow Account and the Sectional Escrow Account respectively and the expenses (including reasonable expenses for legal services of every kind) relating to the execution and enforcement of this Agreement or the Agreement to Hypothecate Cum Deed of Hypothecation including, without limitation, any stamp tax or duty, required to be paid under this Agreement and with respect to any variation, waiver or modification or any consent required in connection with this Agreement or the Hypothecation Agreement Cum Deed of Hypothecation. The Default Escrow Agent shall not be entitled to deduct any amount due and payable by the Seller to the Default Escrow Agent from monies deposited in the Default Escrow Account and the Procurer Account established pursuant to this Agreement. The Default Escrow Agent shall however be entitled to deduct any amount due and payable by the Procurer to the Default Escrow Agent from monies deposited in the Procurer Account established pursuant to this Agreement.

## **9.2 Variation, Waivers and Modifications**

No variation, waiver or modification of the terms of this Agreement shall be valid unless reduced in an agreement in writing signed by the Parties hereto.

## **9.3 Notices**

9.3.1 Any notice, direction, instruction, certificate and any other communication required or permitted to be given hereunder shall be in writing and shall be:

- (a) personally delivered; or
- (b) transmitted by postage prepaid registered mail; or
- (c) delivered through courier.

as elected by the Party giving such notice, direction, instruction, certificate or other communication to the addressee as set-forth below.

9.3.2 Except as otherwise specified herein, the date of any notice, direction, instruction, certificate or other communication hereunder shall be deemed to be:

- (a) the date of receipt if delivered personally or through courier;
- (b) the date seven (7) days after posting if sent by mail;

9.3.3 Except as otherwise expressly provided herein, all notices, directions, instructions, certificates or other communications hereunder and all documents or instruments delivered in connection with this transaction shall be in the English language.

9.3.4 Notices shall be sent:

In case of the Seller

[insert details]

In case of the Procurer

[insert details]

In case of the Default Escrow Agent

[insert details]

In case of the Procurer Banks

[insert details]

## 9.4 No Third Party Beneficiaries

This Agreement is solely for the benefit of the Procurer, the Default Escrow Agent and the Seller and their respective permitted assigns and successors (including the Lenders in the case of the Seller) and no other person shall have any rights under this Agreement.

## 9.5 No Waiver

The failure of a Party to insist in one or more instances upon the strict performance of any of the provisions of this Agreement or to take advantage of any of its rights under this Agreement shall not be construed as a waiver of any such provisions or relinquishment of any rights hereunder but the same shall continue in full force and effect.

## 9.6 Severability

The invalidity or unenforceability, for any reason, of any provision of this Agreement shall not prejudice or affect the validity or enforceability of the other provisions of this Agreement. Provided however, if the said provision is fundamental provision of this Agreement or forms part of the consideration or object of this Agreement, the provision of this Article shall not apply.

## 9.7 Assignments

This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and permitted assigns. No Party shall assign any of its rights or obligations under this Agreement, to any third party, other than Lenders to the Project, without the prior written consent of the other Parties to this Agreement. provided, however, that such consent shall not be required for any

assignment, (and transfer) by the Seller of any or all of its rights hereunder to or in favour of the Selectee appointed in accordance with the terms of the PPA.

## **9.8 Term and Termination**

### **9.8.1 Term and Termination or Expiry of the PPA**

This Agreement shall be effective from the Effective Date. Subject to the provisions of Article 9.8.2 of this Agreement, the Agreement shall be co-terminus with the PPA and shall terminate on the Expiry Date or if the PPA is terminated earlier in accordance with the terms therein, if at such time, all of the Secured Obligations towards the Seller, under the PPA, have been paid in full. The Procurer shall notify the Default Escrow Agent of such Expiry Date occurring or termination together with the Seller's confirmation that all of the Secured Obligations towards the Seller, under the PPA, have been paid in full and then the Procurer shall instruct the Default Escrow Agent to transfer all funds in the Default Escrow Account to the Procurer Account, and Default Escrow Agent shall cease to act as the Default Escrow Agent and cease to implement any other fund transfer provided for in this Agreement.

### **9.8.2 End of the Default Escrow Account**

Notwithstanding anything contained to the contrary in this Agreement, this Agreement may be terminated by the Procurers, if all of the following events (a), (b) and (c) have occurred:

- (a) A period of not less than two (2) years, from the Scheduled Delivery Date or Revised Scheduled Delivery Date, has elapsed; and
- (b) The Procurer has achieved, for its ability to honour its Tariff Payment obligations to the Seller under PPA, a credit rating of 'A' or better from a SEBI registered Indian credit rating agency (acceptable to Lenders) consistently for a period of at least three (3) years; and
- (c) Immediately prior to the aforementioned three (3) year period, for a period of at least two (2) years, there has been no Procurer Event of Default under Article 11 of the PPA by such Procurer.

Provided that, the Procurer shall intimate the Seller in writing of the occurrence of the above events and its intention to terminate this Agreement. If the Seller desires to continue with this Agreement, the Seller shall intimate the same to the Procurer in writing within thirty (30) days of receipt of intimation from the Procurer and in such case the Seller shall be liable to bear all the costs and expenses of continuation of this Agreement, including costs of the Escrow Agent and each Subsidiary Escrow Agent, with effect from such date. In case

the Seller fails to respond or agrees to terminate this Agreement, this Agreement shall stand terminated.

### **9.8.3 Resignation**

**The Default Escrow Agent may, after giving at least one hundred eighty (180) days notice in writing to both Parties resign from acting as Default Escrow Agent for the purposes of this Agreement.**

**Provided however that, no such resignation of the Default Escrow Agent shall be effective until the Parties jointly find a successor bank and such successor bank assumes its responsibilities after execution of an Default Escrow agreement (substantially in the form and content of this Agreement).within the period prescribed by this Agreement.**

**Provided further that, if a successor bank acceptable to the Seller is found within a shorter period, the Parties (with the consent of the Lenders) may waive the notice period of one hundred eighty (180) days.**

### **9.8.4 Termination of Appointment**

**If, in the reasonable judgement of the Seller the Default Escrow Agent commits any material breach of the terms of this Agreement, the Seller shall have the right to require the Procurer to terminate the appointment of the Default Escrow Agent after giving to the Procurer and the Default Escrow Agent a written notice of ninety (90) days or of such shorter period (not shorter than thirty (30) days) as the Seller may decide. Such termination of the appointment of the Default Escrow Agent shall not be effective until a successor bank assumes responsibility.**

### **9.8.5 Termination For a Distress Event**

**Upon the occurrence of a Distress Event, the Seller or Procurer shall serve a written notice of termination on the Default Escrow Agent with copies to either party and appointment of the Default Escrow Agent shall immediately terminate on receipt of such notice by the Default Escrow Agent.**

### **9.8.6 Procedure**

- (a) **In the event of notice of resignation by the Default Escrow Agent or a notice of termination of the Default Escrow Agent by the Seller in accordance with Article 9.8.4 or 9.8.5 above, the Procurer and the Seller shall forthwith take steps to appoint a successor bank as Default Escrow Agent and shall, not later than thirty (30) days before the effectiveness of such resignation or termination, execute and cause such successor bank to execute an agreement with the Procurer and the Seller, on terms substantially similar to those**

contained in this Agreement. All expenses arising due to termination or appointment of the successor Default Escrow Agent by the Seller shall be borne by the Seller.

(b) The Default Escrow Agent shall:

- (i) cease therewith accepting any payments or deposits to the Default Escrow Account;
- (ii) transfer all amounts standing to the credit for the Default Escrow Account to the Default Escrow Account opened with the replacement Default Escrow Agent;
- (iii) when all such amounts have been transferred, close the Default Escrow Account; and
- (iv) within thirty (30) days of such closing, provide to the Procurer and the Seller a written report which shall fully reconcile all deposits to, and withdrawals from the Default Default Escrow Account.

- (c) In the event of the resignation or termination of the Default Escrow Agent and the appointment of a successor to the Default Escrow Agent pursuant to this Article 9.8, new default Escrow Account shall be opened at the main branch of the successor Default Escrow Agent and the relevant provisions of this Agreement shall be applicable to each such account.

## **9.9 Governing Law and Jurisdiction and Dispute Resolution**

9.9.1 This Agreement shall be governed by and constructed in accordance with the laws of India.

9.9.2 If any dispute arises between the Parties hereto during the subsistence of this Agreement, in connection with the validity, interpretation, implementation or alleged breach of any provision of this Agreement or regarding any question as to whether the termination of this Agreement by one Party hereto has been legitimate ('Dispute'), such Dispute shall be resolved by arbitration under the Indian Arbitration and Conciliation Act, 1996, in accordance with the process specified in this Article. In the event of such Dispute remaining unresolved, any party to such Dispute may initiate arbitration in accordance with this Article:.

- (i) If the Dispute exists amongst all the Parties, any of the disputing party shall be entitled to serve an arbitration notice on other parties and propose name of the sole arbitrator. If both the other parties do not accept the person proposed by the party giving the notice, the arbitration tribunal shall consist of five arbitrators, each of the Escrow

Agent, Seller and Procurer appointing one arbitrator and the three arbitrators so appointed appointing two more arbitrators;

Provided that if the Dispute is between any two parties to this Agreement, then the Arbitration tribunal shall consist of three arbitrators, each disputing party appointing one arbitrator and the two arbitrators so appointed shall appoint the third arbitrator. All the appointments or acceptances envisaged under this sub-clause shall be made within 30 days of being first called upon by any disputing party to so appoint or accept;

- (ii) The place of arbitration shall be -----, Rajasthan, India.  
The language of the arbitration shall be English;
- (iii) The arbitration tribunal's award shall be substantiated in writing. The arbitration tribunal shall also decide on the costs of the arbitration proceedings and the allocation thereof;
- (iv) The award shall be enforceable in any court having jurisdiction, subject to the applicable Laws; and
- (v) The provisions of this Article shall survive the termination of the PPA for any reason whatsoever.

## **9.10 Entire Agreement**

The Agreement, including the Schedules, contains all of the understandings and agreements of whatsoever kind and nature existing between all the Parties hereto with respect to the subject matter of this Agreement and the rights, interests, understandings, agreements and obligations of the Parties relating thereto.

## **9.11 Confidentiality**

The Parties undertake to hold in confidence and not to disclose the terms and conditions of this Agreement and the transaction contemplated hereby to third parties, except:

- (a) to their professional advisors;
- (b) to their officers, employees, agents or representatives, who need to have access to such information for the proper performance of their activities;

without the prior written consent of the other Parties.

Provided that, the Procurer shall always have the right to make public this Agreement in accordance with the Bidding Guidelines.

## **9.12 Counterparts**

This Agreement may be executed by the Parties hereto on separate counterparts, each of which when so executed and delivered shall be an original, but all of which shall together constitute one and the same instrument.

**IN WITNESS WHEREOF, the Parties have executed and delivered this Agreement effective as of the date first above written.**

SIGNED AND DELIVERED

**BY THE WITHINNAMED " PROCURER"  
BY THE HAND OF Mr. \_\_\_\_\_  
(AUTHORISED SIGNATORY) PURSUANT TO THE  
RESOLUTION PASSED BY THE BOARD  
ON THE        DAY OF                    2009**

**IN THE PRESENCE OF:  
WITNESS:**

**NAME AND ADDRESS:**

SIGNED AND DELIVERED

**BY THE WITHINNAMED " SELLER"  
BY THE HAND OF Mr. \_\_\_\_\_  
(AUTHORISED SIGNATORY) PURSUANT TO THE  
RESOLUTION PASSED BY THE BOARD  
ON THE        DAY OF                    2009**

**IN THE PRESENCE OF:  
WITNESS:**

**NAME AND ADDRESS:**

SIGNED AND DELIVERED

**BY THE WITHINNAMED "DEFAULT ESCROW  
AGENT"  
BY THE HAND OF Mr. \_\_\_\_\_  
(AUTHORISED SIGNATORY)**

**ON THE        DAY OF                    2009**

**IN THE PRESENCE OF:  
WITNESS:**

**NAME AND ADDRESS:**



SIGNED AND DELIVERED  
BY THE WITHIN NAMED "PROCURER BANKS"

- 1.
- 2.
- 3.
- 4.

BY THE HAND OF THEIR RESPECTIVE  
AUTHORISED SIGNATORIES

ON THE        DAY OF                    2009

IN THE PRESENCE OF:  
WITNESS:

NAME AND ADDRESS:

A11: SCHEDULE 1  
PROCURER'S BANKS

A12: (TO BE INSERTED)

SCHEDULE 2  
PROCURER'S FINANCING PARTIES

**(To be inserted)**

DRAFT AGREEMENT TO HYPOTHECATE CUM DEED OF  
HYPOTHECATION

FOR

LONG TERM BASE LOAD PROCUREMENT OF POWER

Dated [*insert date, month*], 2009

**Draft**

AGREEMENT TO HYPOTHECATE Cum DEED OF HYPOTHECATION

between

[Insert Name of the Procurer] (“Procurer”)

and

[*insert name of SELECTED BIDDER*]  
 (“Seller”)

---

**Procurement of power on Long Term under Case – 1 for meeting the  
base load requirements of [Insert Name of the Procurer] in the state  
of Rajasthan in India.**

A13:

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**This AGREEMENT TO HYPOTHECATE Cum DEED OF HYPOTHECATION AGREEMENT is made this [insert date], 2008 at \_\_\_\_\_, by and between:**

- 1. [Insert Name of the Procurer], a registered company incorporated under Companies Act 1956 having its office at \_\_\_\_\_ (hereinafter referred to as "Procurer" which expression shall unless repugnant to or inconsistent with the context, mean and include its successors and permitted assigns) of the FIRST PART; and**

2. **[Insert Name], a company incorporated under the Companies Act, 1956, with its registered office at [insert address], (hereinafter referred to as the “Seller” which expression shall, unless repugnant to or inconsistent with the context, mean and include its successors and permitted assigns) of the SECOND PART; (Each of the parties of the FIRST and SECOND PART above are individually referred to as a “Party” and collectively as the “Parties”).**

WHEREAS:

- A. **In accordance with the Competitive Bidding Guidelines, the distribution companies of Rajasthan namely Jaipur Vidyut Vitran Nigam Limited (JVVNL), Ajmer Vidyut Vitran Nigam Limited (AVVNL) and Jodhpur Vidyut Vitran Nigam Limited (JdVVNL) through their Authorised Representative had invited interested companies and/or Bidding Consortium and or any Consortium Member thereof (“Bidders”) to purchase the Request for Proposal (RFP) to participate in the bidding process for the selection of Successful Bidder(s) for procurement of power for ‘long term’ through tariff based competitive bidding process under Case – 1 bidding procedure for meeting their ‘base load’ power requirements as per the terms and conditions of the RFP Document.**
- B. **Pursuant to the said bidding process, [Insert name of Selected Bidder] has been identified as the Selected Bidder to supply power to the Procurer for a Contracted Capacity of \_\_\_\_\_ [to be filled in based on Selected Bid] MW in accordance with the terms of PPA.**
- C. **The Procurer has agreed to purchase the Electrical Output upto Contracted Capacity from the Seller and to pay the Seller the Tariff (as defined in the PPA) set out in Schedule 4 of the PPA and for such purposes, the Procurer and the Seller have entered into the PPA on or about the date hereof;**
- D. **In terms of the said PPA, the Procurer is required to duly secure the Seller by establishing an arrangement for securing the Secured obligations (as defined hereinafter) and the Seller and the Procurer have agreed on a default escrow mechanism for the payments of Secured Obligations under the PPA.**
- E. **In furtherance of its obligations under the PPA the Procurer has agreed to create and grant a charge and security interest in favour of the Seller on the Procurer’s right, title and interest on and in the Incremental Receivables in accordance with the terms hereof; and**
- F. **Accordingly, the Parties wish to enter into this Agreement to formally record their respective understanding, representations and covenants in respect of the aforestated.**

**NOW THEREFORE, in consideration of the foregoing and the respective covenants and agreements set forth in this Agreement and other considerations, the receipt, sufficiency and adequacy of which is hereby acknowledged, and intending to be legally bound hereby, the Parties agree as follows:**



A14: ARTICLE 1  
DEFINITIONS AND INTERPRETATION

**a. Definitions**

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**i.** Capitalised terms used but not defined in this Agreement, shall, in so far as the context admits, have the same meaning in this Agreement as has been ascribed to them in the PPA and the Default Escrow Agreement.

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**ii.** Additionally, the following terms shall have the meaning hereinafter respectively assigned to them:

“Agreement” means this Agreement to Hypothecate Cum Deed of Hypothecation Agreement entered into between the Procurer and the Seller and the modifications, amendments or alterations thereto from time to time;

“Business Day” shall mean any day which is not a bank or public holiday in \_\_\_\_\_ Rajasthan.

“Default Escrow Agreement” means the agreement titled ‘Default Escrow Agreement’ dated \_\_\_ entered into between the Parties and the Escrow Agent;

“Hypothecated Interest” shall have the meaning as ascribed thereto in Article 2.2.1 of this Agreement;

“Power Purchase Agreement” or “PPA” means the agreement titled ‘Power Purchase Agreement’ dated \_\_\_\_\_ entered into between the Procurer and the Seller and as may be amended from time to time;

**1.2 Interpretation**

Unless the context otherwise requires, the provisions of Article 1.2 of the PPA is incorporated herein by reference and shall apply for the purposes of this Agreement.

*A15: ARTICLE 2*  
*THE SECURITY INTEREST*

## **2.1 Covenant to pay**

In consideration of the Seller having entered into the PPA and agreeing to supply electricity to the Procurer, subject to the terms and conditions set out in the PPA, the Procurer does hereby covenant with the Seller that it shall pay to the Seller all the Secured Obligations in the manner set out in the PPA.

## **2.2 The Charge**

2.2.1 As security for the payment of the Secured Obligations when due in accordance with the PPA, the Procurer as the legal and / or beneficial owner of the Hypothecated Interest does hereby agree to hypothecate on the Charge Creation Date by way of first priority charge in favour of the Seller:

All right, title, interest, benefit, claims and demands whatsoever of the Procurer in respect of the Incremental Receivables (collectively, the "Hypothecated Interest").

The charge created pursuant to this Article by the Procurer over the Hypothecated Interest in favour of the Seller shall be a floating charge and subject to Article 3.1.1 of this Agreement, shall not hinder the Procurer from selling, leasing or otherwise disposing of or dealing with the Hypothecated Interest or any part thereof. Provided that, the floating charge created pursuant to this Article shall immediately and automatically be converted into a fixed charge upon the occurrence of any Event of Default as defined in the Default Escrow Agreement.

2.2.1A On the date of the creation of the first priority charge in accordance with Article 2.2.1, this Agreement to Hypothecate Cum Deed of Hypothecation shall be deemed to continue as the Deed of Hypothecation between the Parties in accordance with the terms contained herein.

2.2.1B At any time after an Event of Default as defined in the Default Escrow Agreement occurs and is continuing, the Seller shall have the authority to act upon and enforce the provisions of this Agreement in accordance with the provisions hereof and the PPA.

2.2.1C Following the occurrence of an Event of Default as defined in the Default Escrow Agreement, except as may be required under the PPA, the Seller shall not be obliged before taking steps to enforce the Security constituted by or pursuant to this Agreement to:

- (a) take action or obtain judgement or any arbitration award against the Procurer in any court or before any arbitrator;
- (b) make or file any claim or proof in a winding up or dissolution of the Procurer; and

- (c) **exercise any legal remedies, which may be available to it under or in respect of the PPA.**

## **2.3 Release of Charge**

2.3.1 The first priority charge created under Article 2.2.1 shall be immediately released and vacated on the earlier of:

- (a) **the date on which the PPA has terminated, in accordance with the terms thereof, and all the Secured Obligations have been paid in full;**
- (b) **the occurrence of all of the following events mentioned in sub-articles (i), (ii) and (iii) below, subject to the proviso to this sub-clause:**
  - (i) **A period of not less than two (2) years, from the Scheduled Delivery Date or Revised Scheduled Delivery Date, has elapsed; and**
  - (ii) **The Procurer has achieved, for its ability to honour its Tariff Payment obligations to the Seller under PPA, a credit rating of 'A' or better from a SEBI registered Indian credit rating agency (acceptable to Lenders) consistently for a period of at least three (3) years; and**
  - (iii) **Immediately prior to the aforementioned three (3) year period, for a period of at least two (2) years, there has been no Procurer Event of Default under Article 14 of the PPA by such Procurer.**

Provided that, the Procurer shall intimate the Seller in writing of the occurrence of the above events and its intention to release the first priority charge created under this Agreement. If the Seller desires to continue with said first priority pari passu charge, the Seller shall intimate the same to the Procurer in writing within thirty (30) days of receipt of intimation from the Procurer and in such case the Seller shall be liable to bear the costs of continuation of such first priority charge, with effect from such date. In case the Seller fails to respond or agrees to release the first priority charge, the said charge shall forthwith cease and this Agreement shall stand terminated.

2.3.2 In the case of the occurrence of the events described in Article 2.3.1(a) or (b) and in the event the Seller fails to respond or agrees to release the first priority charge as mentioned above, the Seller shall at its own costs and expenses forthwith:

- (a) **cede the benefit of the first priority charge on and security interest in the Hypothecated Interest; and**
- (b) **re-assign, retransfer or re-convey to the Procurer, or as it may direct, the Hypothecated Interest or such part thereof as may remain, freed from the Security created hereunder; and**

- (c) execute all such documents and do all such other acts as may be required by the Procurer in connection with the release of the benefit of the charge on and security interest in the Hypothecated Interest.**

*A16: ARTICLE 3*  
*FURTHER ENCUMBRANCES*

**3.1 Further Encumbrances**

- 3.1.1 Except for the charge created under this Agreement and permitted under Clause 3.1.2 hereof, the Procurer shall not, without the prior written consent of the Seller, which may be granted or rejected in its sole and absolute discretion within thirty (30) days of receipt of a request in this regard from the Procurer, create or suffer any mortgage, charge, lien or encumbrance in or to the Hypothecated Interest or any part thereof or do or allow anything that may prejudice this charge on the Hypothecated Interest
- 3.1.2 The Procurer shall be entitled to create a subordinate/second charge in favour of the Procurer Financing Parties over the Hypothecated Interest, provided however the Procurer shall ensure that the rights of the Seller under this Agreement are not prejudiced in any manner.

*A17: ARTICLE 4*  
*REPRESENTATIONS AND WARRANTIES*

## **4.1 Representations and Warranties of the Procurer**

The Procurer acknowledges that the Seller has entered into this Agreement in reliance on the representations and warranties made by the Procurer in this Agreement. The Procurer hereby represents and warrants to the Seller that:

- (a) The Procurer is a duly constituted entity validly existing under the laws of India and has all requisite legal power and authority to enter into this Agreement and to perform its duties and obligations hereunder;
- (b) This Agreement has been duly executed by a duly authorized officer of the Procurer and constitute the valid, legal and binding obligations of the Procurer enforceable in accordance with the terms hereof and thereof respectively;
- (c) The charge and security interest created hereunder constitute a first priority security interest in favour of the Seller;
- (d) To the best of its knowledge, there are no actions, suits or proceedings pending against the Procurer before any court or administrative body or arbitral tribunal that would adversely and materially affect the financial condition or operations of the Procurer or the ability of the Procurer to perform its duties and obligations under this Agreement;
- (e) The execution, delivery and performance of this Agreement by the Procurer have been duly authorized by all requisite actions, and will not constitute a violation of:
  - (i) any statute, judgement, order, decree or regulation of any court, Indian Government Instrumentality or arbitral tribunal applicable or relating to the Procurer, its assets or its business; or
  - (ii) the Procurer's constitution or other documents or any indenture, contract or agreement to which it is a party or by which it or its property may be bound;
- (f) Based on available records, the Receivables are believed by the Procurer to be true and bonafide and fully collectible Receivables generated in the ordinary course of business of the Procurer and the Procurer has full right and interest in the Receivables;
- (g) No charge, security interest or other encumbrance presently exists over the Hypothecated Interest other than the charge created under this Agreement.

## 4.2 Representations and Warranties of the Seller

The Seller hereby represents and warrants to the Procurer that:

- (a) The Seller is a company duly constituted under the Companies Act, 1956, as amended, and validly existing under the laws of India and has all requisite legal power and authority to enter into this Agreement and to perform its duties and obligations hereunder;
- (b) This Agreement has been duly executed by a duly authorized officer of the Seller and constitute the valid, legal and binding obligations of the Seller enforceable in accordance with the terms hereof ; and
- (c) The execution, delivery and performance of this Agreement by the Seller has been duly authorized by all requisite actions, and will not constitute a violation of:
  - (A) any statute, judgement, order, decree or regulation of any court, Indian Government Instrumentality or arbitral tribunal applicable or relating to the Seller, its assets or its business; or
  - (B) the Seller's constitution or other documents or any indenture, contract or agreement to which it is a party or by which it or its property may be bound.

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A18: ARTICLE 5  
PROCURER UNDERTAKINGS

## 5.1 Certain Undertakings

During the term of this Agreement, the Procurer shall:

- (a) do all acts and things as may be reasonably required or appropriate to give effect to the charge/ security interest created in favour of the Seller on and in the Hypothecated Interest and to take all steps to maintain such charges and security interest in full force and effect on and in the Hypothecated Interest;
- (b) obtain and maintain at its own expense any license, permission, consent or authorization and pay any taxes or duties, including without limitation, stamp duties, which may be required in order to create, maintain and preserve the charge/ security interest granted under this Agreement and to enable the Seller to have the full benefit of this Agreement;
- 1 deposit or cause to be deposited immediately upon the receipt of Receivables in the Procurer's Banks; and
- (d) after the occurrence and during the continuance of an Event of Default deliver to the Seller (not later than the second Business Day of each Month) copies of summary statements of the electricity sold during the immediately preceding Month.

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## 5.2 Indemnification

The Seller and every attorney, appointed by it shall be entitled to be indemnified out of the Hypothecated Interest in respect of all liabilities and expenses incurred by it in the execution of the powers of the Seller under this Agreement other than those arising on account of the negligence or default or misconduct on the part of the Seller, or any such attorney and against all actions, proceedings, costs, claims and demands in respect of any matter or thing done or omitted to be done by such person pursuant to this Agreement.

## 5.3 Further Actions

The Procurer shall from time to time upon the request of the Seller, promptly and duly execute or procure the execution of all such further documents and conduct such filings and registration, and take any other action (at the sole expense of the Seller) as the Seller may reasonably require in order that the Seller may obtain the full benefit of the charge created by this Agreement and of the rights and powers hereby granted.



A19: ARTICLE 6  
MISCELLANEOUS PROVISIONS

## **6.1 Continuing Security**

**3.2.3** The Security created by this Agreement shall be a continuing security for the performance and discharge of the Secured Obligations.

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**3.2.4** The Security so created

- (a) shall not be set aside by any intermediate payment or satisfaction of any part of the amount hereby secured; and
- (b) shall be in addition to and shall not in any way be prejudiced or affected by any collateral or other security now or hereafter held by the Seller for all or any part of the Secured Obligations.

**3.2.5** Neither the charge hereby granted nor the rights, powers and remedies conferred on the Seller by this Agreement or by law shall be discharged, impaired or otherwise affected by:

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- (a) any time or other indulgence given or agreed to be given by the Seller to the Procurer or any other party providing Security for the Secured Obligations;
- (b) any amendment of the PPA or the Default Escrow Agreement not agreed to by the Seller;
- (c) any release or exchange of Security or obligations granted or undertaken pursuant to PPA or the Default Escrow Agreement or any document connected therewith;
- (d) any other act, event or omission which but for this provision would impair or discharge the Procurer's liability hereunder; and
- (e) any change in the structure or organization of the Procurer as a result of a Change in Law, insolvency of the Procurer or otherwise.

## **6.2 Waiver and Severability**

No failure or delay by the Seller in exercising any right, power or remedy under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of the same preclude any further exercise thereof or the exercise of any other right, power or remedy. If at any time, any provision of this Agreement is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction, the legality, validity and enforceability of such provision under the law of any other jurisdiction, and of the remaining provisions of this Agreement, shall not be affected or impaired thereby. Provided however, if the said provision is fundamental provision of this Agreement or forms part of the consideration or object of this Agreement, the provision of this Article shall not apply

## **6.3 Assignment and Transfer**

**6.3.1** This Agreement shall inure to the benefit of the Seller and its successors and permitted assigns and the obligations of the Procurer hereunder shall be binding on its successors and assigns notwithstanding any Change in Law or change in the constitution or status of the Procurer or of any of its successors, to the extent stated therein.

**1.1.2** The Procurer shall not have the right to assign all or any of its rights or obligations hereunder.

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**1.1.3** The Seller shall have the right to assign all or any of its rights, title and interest hereunder and to the Hypothecated Interest as security only to the Lenders or the Selectee appointed under the terms of the PPA.

## 6.4 Notices

6.4.1 Any notice or other information required or authorised by this Agreement to be given shall be given in writing, in English and by:

**B.** delivering it by hand (a written acknowledgement in receipt thereof shall be sufficient evidence that the notice or other information has been duly given); or

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**C.** sending it by courier or registered post,;

to the relevant Parties at the addresses referred to in Article 6.4.2 below.

**5.3.1** The address and other details of the Parties for the purpose of communication, unless otherwise notified in writing to the other Parties shall be:

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*[Insert Address of the Procurer]*

*[insert addresses of the the Seller]*

## 6.5 Governing Law and Dispute Resolution

### 6.5.1 Governing Law

This Agreement shall be governed by and constructed in accordance with the laws of India.

### 6.5.2 Dispute Resolution

**If any dispute arises between the Parties hereto during the subsistence of this Agreement, in connection with the validity, interpretation, implementation or alleged breach of any provision of this Agreement or regarding any question as to whether the termination of this Agreement by one Party hereto has been legitimate, such Dispute shall be resolved by arbitration under the Indian Arbitration and Conciliation Act, 1996 and the Rules of the Indian Council of Arbitration, in accordance with the process specified in this Article. In the event of such Dispute remaining unresolved as referred to in this Article 6.5.2, any party to such Dispute may refer the matter to registrar under the Rules of the Indian Council of Arbitration.**

- (i) The Arbitration tribunal shall consist of three arbitrators to be appointed in accordance with the Indian Council of Arbitration Rules;**
- (ii) The place of arbitration shall be \_\_\_\_\_, Rajasthan, India. The language of the arbitration shall be English;**
- (iii) The arbitration tribunal's award shall be substantiated in writing. The arbitration tribunal shall also decide on the costs of the arbitration proceedings and the allocation thereof;**
- (iv) The award shall be enforceable in any court having jurisdiction, subject to the applicable Laws; and**
- (v) The provisions of this Clause shall survive the termination of the PPA for any reason whatsoever.**

## **6.6 Language**

This Agreement is written in the English language. The English language text of this Agreement shall prevail over any translation.

## **6.7 Amendments**

Any modification, amendment, or waiver of any provision of this Agreement shall be effective if in writing and signed in person or by an authorised representative of the Parties.

## **6.8 Counterparts**

This Agreement may be executed in two or more counterparts, but all of such counterparts shall together constitute one and the same instrument.

## **6.9 Terms of this Agreement to prevail**

The Parties hereto agree that if any provisions of this Agreement shall conflict with any provision of the PPA, then the provisions of this Agreement shall prevail.

## **6.10 Confidentiality**

The Parties undertake to hold in confidence and not to disclose the terms and conditions of this Agreement and the transaction contemplated hereby to third parties, except:

6 \_\_\_\_\_ to their professional advisors;

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7 \_\_\_\_\_ to their officers, employees, agents or representatives, who need to have access to such information for the proper performance of their activities;

**without the prior written consent of the other Parties.**

**Provided that, the Procurer shall always have the right to make public this Agreement in accordance with the Bidding Guidelines.**

### **6.11 Effectiveness**

**This Agreement shall become effective on the date of signing of this Agreement by the Parties.**

**IN WITNESS WHEREOF the Parties hereto have executed this Agreement through their authorised representatives on the day, month and year first above mentioned**

SIGNED AND DELIVERED

**BY THE WITHINNAMED " PROCURER"**

**BY THE HAND OF Mr. \_\_\_\_\_**

**(AUTHORISED SIGNATORY) PURSUANT TO THE  
RESOLUTION PASSED BY THE BOARD  
ON THE        DAY OF                    2009**

**IN THE PRESENCE OF:**

**WITNESS:**

**NAME AND ADDRESS:**

SIGNED AND DELIVERED

**BY THE WITHINNAMED " SELLER"**

**BY THE HAND OF Mr. \_\_\_\_\_**

**(AUTHORISED SIGNATORY) PURSUANT TO THE  
RESOLUTION PASSED BY THE BOARD  
ON THE        DAY OF                    2009**

**IN THE PRESENCE OF:**

**WITNESS:**

**NAME AND ADDRESS:**

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**REQUEST FOR PROPOSAL**

**FOR**

**PROCUREMENT OF POWER**

**FOR**

**'LONG TERM'**

**Under Case – 1 Bidding Procedure**

**THROUGH**

**TARIFF BASED COMPETITIVE BIDDING PROCESS**  
**(As per Bidding Guidelines, issued by the Government of India, for**  
**Determination of Tariff by Bidding Process for Procurement of Power by**  
**Distribution Licensees)**

**FOR MEETING**

**THE SEASONAL LOAD REQUIREMENTS**

**OF**

**Jaipur Vidyut Vitran Nigam Limited (JVVNL),**  
**Ajmer Vidyut Vitran Nigam Limited (AVVNL)**  
**and**  
**Jodhpur Vidyut Vitran Nigam Limited (JdVVNL)**

**Issued by**  
**Rajasthan Rajya Vidyut Prasaran Nigam Limited (RRVPL)**  
**February 2009**



**Rajasthan Rajya Vidyut Prasaran Nigam Limited (RRVPNL)**  
**Vidyut Bhawan, Janpath, Jyoti Nagar**  
**Jaipur-302005 (Rajasthan)**

Request for Proposal (hereinafter referred to as RFP) for 'long term' procurement of power under Case – 1 bidding procedure through tariff based competitive bidding (as per Bidding Guidelines, issued by the Government of India, for Determination of Tariff by Bidding Process for Procurement of Power by Distribution Licensees) for meeting the **Seasonal Load** power requirements of Jaipur Vidyut Vitran Nigam Limited (JVVNL), Ajmer Vidyut Vitran Nigam Limited (AVVNL) and Jodhpur Vidyut Vitran Nigam Limited (JdVVNL) in the state of Rajasthan in India.

This RFP is issued to: –

**M/s** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Issued by:**

**Name:** B. K. Makhija  
**Designation:** Chief Engineer (RPPC)  
**Address:** RRVPNL  
Vidyut Bhawan, Janpath, Jyoti Nagar  
Jaipur-302005 (Rajasthan)  
**Telefax:** +91-141-2740275  
**Email:** ppmrvpn@sancharnet.in  
**Date:** .....

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## REQUEST FOR PROPOSAL NOTIFICATION FOR SUPPLY OF POWER

### Rajasthan Rajya Vidyut Prasaran Nigam Limited (RRVPNL)

**13.** The **Rajasthan Rajya Vidyut Prasaran Nigam Limited (RRVPNL)** hereinafter referred to as “Authorized Representative”, on behalf of **Jaipur Vidyut Vitran Nigam Limited (JVVNL), Ajmer Vidyut Vitran Nigam Limited (AVVNL) and Jodhpur Vidyut Vitran Nigam Limited (JdVVNL)**, hereinafter referred to as “Procurer(s)” hereby invites interested companies and/or Bidding Consortium and or any Consortium Member thereof (“Bidders”) to purchase the Request for Proposal (RFP) to participate in the bidding process for the selection of Successful Bidder(s) for procurement of power for ‘long term’ through tariff based competitive bidding process under Case – 1 bidding procedure for meeting the **Seasonal Load** power requirements of the Procurers on the basis of international competitive bidding in accordance with the “Guidelines for Determination of Tariff by Bidding Process for Procurement of Power by Distribution Licensees” issued by Government of India, Ministry of Power under Section – 63 of the Electricity Act, 2003 and as amended from time to time. The responsibility of the Successful Bidder(s) would be to supply power to the Procurer(s) as per the terms and conditions of the RFP Documents.

**14. Bidding Process:**

The Authorized Representative seeks to qualify and select Successful Bidder(s) for supply of power as aforesaid through this bidding process. For the purpose of selection of the Successful Bidder(s), Bidders shall be required to submit both Non-Financial Bid and Financial Bid simultaneously in a single stage bidding process as per the timelines mentioned in para 10 of this notification. Bidders who meet the Qualification Requirement as specified in Clause 2.1 of the RFP will be Qualified Bidders and the Financial Bids of all such Qualified Bidders shall be opened and evaluated as per provisions of Clause 3.4 of the RFP for the purpose of selection of Successful Bidder(s).

**15. Procurement of power**

Procurer(s) intend(s) to procure **1000 MW** power ( $\pm 20\%$ ) at the Delivery Point for a period of **25** years from the Scheduled Delivery Date in accordance with the terms of the Power Purchase Agreement (PPA). This procurement of power is being done under Case – 1 bidding procedure.

**16. Technology:** The Bidder is free to choose any power generation technology, including but not limited to sub-critical / supercritical, open / combined cycle, etc.

**17. Fuel:** The choice of fuel, including but not limited to coal or gas, it’s sourcing and transportation is left entirely to the discretion of the Bidder. The Successful Bidder(s) shall bear complete responsibility to tie up the fuel linkage and the infrastructural requirements for fuel transportation, handling and storage.

**18. Power generation source:** Bidders are free to supply from any source of power generation including but not limited to hydel power. In case supply of power is proposed from a hydel source the hydrology risk shall be entirely borne by the Bidders. However, if the available capacity of the Seller from a generating station is in excess of the total Contracted Capacity of the Seller, then this excess capacity shall be at the disposal of the Seller.

**19. Commencement of supply of power:**

The Successful Bidder(s) shall have to commence the supply of power on the Scheduled Delivery Date in accordance with the provisions of the PPA.

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**20. Tariff:**

The tariff shall be payable by the Procurer(s) in Indian Rupees, as per provisions of the PPA. Bidders shall quote the tariff as per the pre-specified structure mentioned in the RFP.

**21. Issue of RFP:**

The detailed terms and conditions for qualification of the Bidders and for Bid submission are indicated in the RFP. All those interested in purchasing the RFP may respond in writing to the Authorized Representative at the address given in para 11 below with a non-refundable fee of **Rs. 5,00,000/- (Rupees Five Lac only) or 11,500 US Dollars (US Dollars Eleven Thousand Five Hundred Only)**, in the form of a demand draft / banker's cheque / pay order drawn in favor of **Sr. A. O. (EA & Cash), Rajasthan Rajya Vidyut Prasaran Nigam Limited**, payable at Jaipur, latest by **30.03.09**. The RFP shall be issued to the Bidders on any working day from **25.02.09 to 30.03.09** between 10:00 hours (IST) to 17:00 hours (IST) by **RRVPNL** on written request and against payment of the above mentioned fee by any Bidder. In case where Bidders request the documents to be sent by post, the Procurer/ Authorized Representative shall promptly dispatch the RFP to such Bidder by registered mail/ air mail only upon receipt of written request and payment of the above mentioned fee by such Bidders. The Authorized Representative shall, under no circumstances, be held responsible for late delivery or loss of documents so mailed. The RFP can also be downloaded from [www.rajenergy.com](http://www.rajenergy.com) & [www.rvpn.co.in](http://www.rvpn.co.in). However, in such case interested Bidder can submit the Bid only on submission of non refundable fee of **Rs. 5,00,000/- (Rupees Five Lac only) or 11,500 US Dollars (US Dollars Eleven Thousand Five Hundred Only)** as mentioned above separately along with the Bid.

**22. Receipt and Opening of Bid:**

Bid must be delivered to the address as given in para 11 of this notification on or before **15:00** hours (IST) on **01.06.09** and the Non- Financial Bid will be opened on the same day at **15:30** hours (IST), in the presence of Bidder's representatives who wish to attend. If it is a public holiday on the last date for submission of the Bid, the submission and the receipt of the Bid shall be on the next working day at the place of submission of Bid, on which day the Non-Financial Bid received shall be opened. The Financial Bid shall be opened as per the time schedule given in Clause 2.14.1 of the RFP.

**23. Nodal Person for enquiries and clarifications**

All correspondence, clarifications in respect of the RFP and submission of the Bid shall be addressed to:

Name: **B. K. Makhija**  
Designation: **Chief Engineer (RPPC)**  
Address: **RRVPNL**  
**Vidyut Bhawan, Janpath, Jyoti Nagar**  
**Jaipur-302005 (Rajasthan)**  
Telefax: **+91-141-2740275**  
Email: **ppmrvpn@sancharnet.in**

**24.** All capitalized words and expressions used in this notification but not defined herein shall have the same meaning as ascribed to them in the RFP.

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### DISCLAIMER

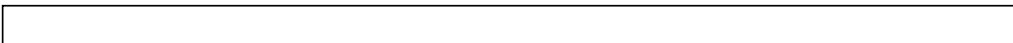
5. This Request for Proposal (RFP) document is not an agreement or offer by the **Rajasthan Rajya Vidyut Prasaran Nigam Limited** to the prospective Bidders or any other party. The purpose of this RFP is to provide interested parties with information to assist the formulation of their Bid. This RFP is based on material and information available in public domain.
6. This RFP, along with its Formats, is not transferable. The RFP and the information contained therein is to be used only by the person to whom it is issued. Save and except as provided in Clause 2.18 of the RFP, it shall not be copied or distributed by the recipient to third parties. In the event that the recipient does not continue with its involvement in the bidding process in accordance with this RFP, this RFP must be kept confidential.
7. While this RFP has been prepared in good faith, neither the Procurer/ Authorized Representative nor its employees or advisors/consultants make any representation or warranty express or implied as to the accuracy, reliability or completeness of the information contained in this RFP.
8. Neither the Procurer/ Authorized Representative, its employees nor its advisors / consultants will have any liability to any Bidder or any other person under the law of contract, tort, the principles of restitution or unjust enrichment or otherwise for any loss, expense or damage which may arise from or be incurred or suffered in connection with anything contained in this RFP, any matter deemed to form part of this RFP, the award for supply of power, the information supplied by or on behalf of Procurer/ Authorized Representative or its employees, any advisors/consultants or otherwise arising in any way from the selection process for the said supply of power.



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## DEFINITIONS

Any capitalized term, used but not defined in this RFP, shall have the meaning ascribed to such term in the RFP Documents, or the Bidding Guidelines, in that order. In absence of availability of definitions in the foregoing references, the capitalized terms shall be interpreted in accordance with the Electricity Act 2003, the CERC (Terms and Conditions of Tariff) Regulations 2004, Grid Code or any other relevant electricity law, rule or regulation prevalent in India, as amended or re-enacted from time to time, in that order.

### The following terms are defined for use in this RFP:

**“Affiliate”** shall mean a company that either directly or indirectly

- iv. controls or
- v. is controlled by or
- vi. is under common control with

a Bidding Company (in the case of a single company) or a Member (in the case of a Consortium) and **“control”** means ownership by one company of at least twenty six percent (26%) of the voting rights of the other company. As an illustration a chart is annexed hereto as Format 5.12;

**“Appropriate Commission”** shall mean the CERC, or the SERC or the Joint Commission referred to in Section 83 of the Electricity Act 2003, as the case may be;

**“Authorized Representative”** shall mean the body corporate authorized by the Procurer(s) to carry out the bidding process for the selection of the Successful Bidder(s) on their behalf as defined in Clause **Error! Reference source not found.** of this RFP;

**“Bid”** shall mean the Non-Financial Bid and the Financial Bid submitted by the Bidder, in response to this RFP, in accordance with the terms and conditions hereof.

**“Bidder”** shall mean Bidding Company or a Bidding Consortium submitting the Bid. Any reference to the Bidder includes Bidding Company / Bidding Consortium/ Consortium, Member of a Bidding Consortium including its successors, executors and permitted assigns and Lead Member of the Bidding Consortium jointly and severally, as the context may require”;

**“Bidding Company”** shall refer to such single company that has submitted the Bid in accordance with the provisions of this RFP;

**“Bidding Consortium” or “Consortium”** shall refer to a group of companies that has collectively submitted the Bid in accordance with the provisions of this RFP;

**“Bid Bond”** shall mean the unconditional and irrevocable bank guarantee to be submitted along with the Bid by the Bidder under Clause 2.12 of this RFP, as per the prescribed Format 4.9;

**“Bid Deadline”** shall mean the last date and time for submission of Bid in response to this RFP as specified in Clause 2.8 of this RFP;

**“Bidding Guidelines”** shall mean the “Guidelines for Determination of Tariff by Bidding Process for Procurement of Power by Distribution Licensees” issued by Government of India,

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Ministry of Power dated 19<sup>th</sup> Jan 2005 under Section – 63 of Electricity Act and as amended from time to time till the Bid Deadline;

“**Case -1 Bidding Procedure**” shall have the meaning as ascribed thereto in the Bidding Guidelines;

“**CERC**” shall mean the Central Electricity Regulatory Commission of India constituted under sub – section (1) of Section-76 of the Electricity Act, 2003 or its successors;

“**Conflict of Interest**” A Bidder may be considered to be in a Conflict of Interest with one or more Bidders in the same bidding process under this RFP if they have a relationship with each other, directly or indirectly through a common company, that puts them in a position to have access to information about or influence the Bid of another Bidder;

“**Consents, Clearances and Permits**” shall mean all authorizations, licenses, approvals, registrations, permits, waivers, privileges, acknowledgements, agreements, or concessions required to be obtained from or provided by any concerned authority for the purpose of setting up of the generation facilities and/or supply of power;

“**Contracted Capacity**” shall mean the net capacity of power (in MW) contracted between the Seller and the Procurer(s) at the Interconnection Point as provided in the Selected Bid as per Format 4.10 of this RFP;

“**Contract Performance Guarantee (CPG)**” shall have the meaning as per Clause 2.13 of this RFP;

“**Contract Year**” shall mean the period beginning on the Scheduled Delivery Date and ending on the immediately succeeding March 31 and thereafter each period of 12 months beginning on April 1 and ending on March 31 provided that the last Contract Year shall end on the last day of the term of the PPA;

“**CTU**” or “**Central Transmission Utility**” shall mean the utility notified by the Central Government under Section-38 of the Electricity Act 2003;

“**CTU Interface**” shall mean the point where

- iv. the power from the power station switchyard bus of the Seller shall be injected into the interstate transmission system OR
- v. the dedicated transmission line of the Seller shall connect the power station of the Seller to the interstate transmission system OR
- vi. the intrastate transmission system of the Seller’s state shall connect to the interstate transmission system for the purpose of transmitting power from the Seller’s power station;

“**Delivery Point**” shall mean the STU Interface(s) within the region of the Procurer(s), where power is delivered to the Procurer(s) after it is injected by the Seller at the Interconnection Point;

“**Effective Date**” shall mean the date from which the PPA becomes effective;



**“Electricity Act 2003”** shall mean the Electricity Act, 2003 and any rules, amendments, regulation, notifications, guidelines or policies issued there under from time to time.

**“Financial Bid”** shall mean Envelope II of the Bid, containing the Bidder’s Quoted Tariff as per the Format 4.10 of this RFP;

**“Financially Evaluated Entity”** shall mean the company which has been evaluated for the satisfaction of the financial requirement set forth in Clause 2.1.2.1 hereof;

**“Grid Code” / “IEGC” or “State Grid Code”** shall mean the Grid Code specified by the Central Commission under clause (h) of sub-section (1) of Section 79 of the Electricity Act and/or the State Grid Code as specified by the concerned State Commission referred under clause (h) of sub-section (1) of Section 86 of the Electricity Act, as applicable;

**“Injection Point”** in relation to each Financial Bid by a Bidder, shall mean either the CTU Interface or the Delivery Point as specified by the Bidder in Format 4.10 of this RFP;

**“Interconnection Point”** shall mean the point where the power from the power station switchyard bus of the Seller is injected into the interstate/intrastate transmission system(including the dedicated transmission line connecting the power station with the interstate/intrastate transmission system);

**“Law”** shall have the same meaning as ascribed thereto in the PPA;

**“Lead Member of the Bidding Consortium” or “Lead Member”** shall mean the Member which commits at least 51% equity stake in the Project Company and so designated by other Member(s) of the Bidding Consortium in accordance with the Consortium Agreement specified in Format 4.3 of this RFP;

**“Letter of Intent” or “LOI”** shall mean the letter to be issued by the Authorized Representative to the Successful Bidder(s) for supply of power pursuant to Clause 3.5 of the RFP;

**“Levelized Tariff”** shall mean the tariff calculated in accordance with the provisions of Clause 3.4.17 of the RFP;

**“Member of a Bidding Consortium” or “Member” or “Consortium Member”** shall mean each company in the Bidding Consortium which has executed the Consortium Agreement as provided in Format 4.3 of this RFP;

**“Minimum Bid Capacity”** shall mean the minimum capacity in MW specified by the Authorized Representative in Clause 1.3.1, for which the Bidder is required to submit its Bid;

**“Non Financial Bid”** shall mean Envelope I of the Bid containing the documents as specified in Clause 2.4.1.1 of the RFP;

**“Normative Availability”** shall carry the same meaning as defined in the PPA;



**“Parent Company”** shall mean a company that holds at least twenty six percent (26%) of the paid - up equity capital directly or indirectly in the Bidding Company or in the Member of a Bidding Consortium, as the case may be;

**“PPA”<sup>8</sup>** shall mean the agreement to be entered into between the Procurer(s) and the Seller pursuant to which the Seller shall supply power to the Procurer(s) as per the terms and conditions specified therein and a draft of which is attached hereto and marked as Enclosure 1 of Format 5.5 of this RFP, including all its schedules, annexures, and all amendments or modifications;

**“Procurer(s)”** shall mean the entity (ies) as specified in Clause **Error! Reference source not found.** of this RFP;

**“Project Company”** shall mean the company, incorporated by the Bidder as per Indian laws, in accordance with Clause 2.2.8;

**“Qualification Requirements”** shall mean the qualification requirements as set forth in Clause 2.1 of this RFP;

**“Qualified Bidder(s)”** shall mean the Bidder(s) who, after evaluation of their Non Financial Bid as per Clauses 3.2 and 3.3, stand qualified for opening and evaluation of their Financial Bid;

**“Quoted Capacity Charges”** shall mean the sum total of Quoted Escalable Capacity Charges and Quoted Non Escalable Capacity Charges;

**“Quoted Energy Charges”** shall mean the sum total of Quoted Escalable Energy Charges and Quoted Non Escalable Energy Charges;

**“Quoted Escalable Energy Charges”** shall mean the charges quoted by the Bidder in column no. 7 or column no. 9 of its Financial Bid as per Format 4.10 of this RFP (applicable as per Clause 2.4.1.1(B)(ix) of this RFP);

**“Quoted Escalable Capacity Charges”** shall mean the charges as quoted by the Bidder in column no. 5 of its Financial Bid as per Format 4.10 of this RFP;

**“Quoted Escalable Fuel Handling Charges”** shall mean the charges as quoted by the Bidder in column no. 15 of its Financial Bid as per Format 4.10 of this RFP (applicable as per Clause 2.4.1.1(B) (ix) of this RFP);

**“Quoted Escalable Inland Transportation Charges”** shall mean the charges as quoted by the Bidder in column no. 11 of its Financial Bid as per Format 4.10 of this RFP (applicable as per Clause 2.4.1.1(B)(ix) of this RFP);

**“Quoted Escalable Overseas Transportation Charges”** shall mean the charges as quoted by the Bidder in column no. 13 of its Financial Bid as per Format 4.10 of this RFP (applicable as per Clause 2.4.1.1(B)(ix) of this RFP);

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<sup>8</sup> In case the Successful Bidder is supplying power from more than one generation source, then separate PPAs need to be executed for each such generation source.

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**“Quoted Non Escalable Capacity Charges”** shall mean the charges as quoted by the Bidder in column no. 4 of its Financial Bid as per Format 4.10 of this RFP;

**“Quoted Non Escalable Energy Charges”** shall mean the charges as quoted by the Bidder in column no. 6 or column no. 8 of its Financial Bid as per Format 4.10 of this RFP(applicable as per Clause 2.4.1.1(B)(ix) of this RFP);

**“Quoted Non Escalable Fuel Handling Charges”** shall mean the charges as quoted by the Bidder in column no. 14 of its Financial Bid as per Format 4.10 of this RFP(applicable as per Clause 2.4.1.1(B)(ix) of this RFP);

**“Quoted Non Escalable Inland Transportation Charges”** shall mean the charges as quoted by the Bidder in column no. 10 of its Financial Bid as per Format 4.10 of this RFP(applicable as per Clause 2.4.1.1(B)(ix) of this RFP);

**“Quoted Non Escalable Overseas Transportation Charges”** shall mean the charges as quoted by the Bidder in column no. 12 of its Financial Bid as per Format 4.10 of this RFP(applicable as per Clause 2.4.1.1(B)(ix) of this RFP);

**“Quoted Tariff”** shall mean the sum total of Quoted Capacity Charges and Quoted Energy Charges, as applicable, quoted by the Bidder as per the prescribed Format 4.10 and shall be construed to be at the Interconnection Point as mentioned in its Bid;

**“Requisitioned Capacity”** means the total aggregate power of 1000 MW proposed to be contracted by the Procurer(s) with the Successful Bidder(s) through this bidding process for supply at the Delivery Point for the term of the PPA as per the terms and conditions specified therein;

**“RFP”** shall mean this Request for Proposal dated **25.02.09** along with all formats and RFP Documents attached hereto and shall include any modifications, amendments alterations or clarifications thereto;

**“RFP Documents”** shall mean the following documents to be entered into by the parties to the respective agreements in connection with the supply of power:

- e) PPA;
- f) Default Escrow Agreement;
- g) Agreement to Hypothecate-cum-deed of Hypothecation; and
- h) any other agreements designated as such, from time to time by the Authorized Representative;

**“Scheduled Delivery Date”** shall mean **31.08.13** on which the Seller is required to start delivering the power at the Delivery Point as per the terms and conditions of the PPA;

**“Seasonal Load”** shall mean the requirement of power as specified by the Authorized Representative at Sr. No. 4 of Clause 1.3.1 of this RFP;

**“Seller”** shall mean the Successful Bidder/or the Project Company, as the case may be who submit the Contract Performance Guarantee and executes the PPA and other RFP Documents

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with the Procurer(s) and who shall be responsible for supplying power to the Procurer(s) at the Delivery Point for the term of the PPA as per the terms and conditions specified therein;

“**SERC**” shall mean the State Electricity Regulatory Commission constituted under Section-82 of the Electricity Act, 2003 or its successors, and includes a Joint Commission constituted under sub-section (1) of Section 83 of the Electricity Act 2003;

“**Statutory Auditor**” shall mean the auditor of a Company appointed under the provisions of the Companies Act, 1956 or under the provisions of any other applicable governing law;

“**STU**” or “**State Transmission Utility**” shall mean the board or the government company specified as such by the State Government under sub-section (1) of Section 39 of the Act;

“**STU Interface(s)**” shall mean the point(s) at which the CTU network is connected to the intrastate transmission system of the Procurer(s)’s State(s), and at which the Procurer(s) agree to receive power up to the Requisitioned Capacity;

For generation source in the same state as that of the Procurer(s), the STU Interface shall be the bus-bar of the generating station from which power is contracted to be supplied, at an appropriate voltage level as specified by the STU.

“**Successful Bidder(s)**” shall mean the Bidder(s) selected by the Authorized Representative, pursuant to this RFP for supply of power by itself or through the Project Company as per the terms of the RFP Documents, and to whom a Letter of Intent has been issued;

“**Tariff**” shall mean the tariff as computed in accordance with Schedule 4 of the PPA;

“**Trading Licensee**” shall mean the Bidder which is an Electricity Trader and submits its Bid on the basis of an exclusive power purchase agreement executed with the entity developing the generation source from where the power is proposed to be supplied by the Bidder;

“**Ultimate Parent Company**” shall mean a company which directly or indirectly owns at least twenty six percent (26%) paid up equity capital in the Bidding Company or Member of a Consortium, (as the case may be) and/or in the Financially Evaluated Entity and such Bidding Company or Member of a Consortium, (as the case may be) and/or the Financially Evaluated Entity shall be under the direct control or indirectly under the common control of such company;





# SECTION - 1

## INTRODUCTION



## SECTION 1

### 6. INTRODUCTION

- 1.4 The Procurer(s) have authorized **Rajasthan Rajya Vidyut Prasaran Nigam Limited (RRVNL)** as its Authorized Representative to carry out the bidding process for the selection of Successful Bidder(s) for supply of power under Case-1 Bidding Procedure and have executed a Joint Deed Agreement as per Format 5.4. Accordingly the Authorized Representative, on behalf of **Jaipur Vidyut Vitran Nigam Limited (JVVNL), Ajmer Vidyut Vitran Nigam Limited (AVVNL) and Jodhpur Vidyut Vitran Nigam Limited (JdVVNL)**, hereinafter referred to as the Authorized Representative, acting through **Mr. B. K. Makhija, Chief Engineer (RPPC), RRVNL, Vidyut Bhawan, Janpath, Jyoti Nagar, Jaipur-302005 (Rajasthan)**, which expression shall also include the successors and permitted assigns of the Authorized Representative, hereby invites interested Bidders to purchase the RFP to participate in the bidding process for the selection of Successful Bidder(s) for procurement of power for **“long term”** through tariff based competitive bidding process under Case – 1 bidding procedure for meeting the **Seasonal Load** power requirements of the Procurers on the basis of international competitive bidding in accordance with the “Guidelines for Determination of Tariff by Bidding Process for Procurement of Power by Distribution Licensees” issued by Government of India, Ministry of Power under Section – 63 of the Electricity Act, 2003 and as amended from time to time. The responsibility of the Successful Bidder(s) shall be to supply power to the Procurer(s) as per the terms and conditions of the RFP Documents.
- 1.5 The Authorized Representative proposes to select the Bidder(s) having the prescribed qualifications and whose Quoted Tariff is determined to be acceptable as per the provisions of Clause 3.5 to become Seller(s). The Seller(s) shall supply power to the Procurer(s) pursuant to and as per the terms and conditions of the PPA to be signed between the Procurer(s) and the Seller. The Procurer(s) shall pay to the Seller(s), the Quoted Tariff of the Successful Bidder(s) which has been adopted by the Rajasthan Electricity Regulatory Commission, as per the terms and conditions of the PPA.
- 1.6 **Power Procurement**
- 1.6.1 **Scope**

This bidding process is being carried out under Case – 1 bidding procedure as mentioned in the Bidding Guidelines, according to which the Bidder is free to choose any power generation source, any power generation technology and fuel type for supply of power. Further, all Bidders shall indicate the source of power generation from where the Contracted Capacity would be delivered and the type of fuel which shall be used. Supply of power is permitted from operational power plants or from power plants proposed to be commissioned on or before the Scheduled Delivery Date, subject to availability of reliable power over the term of the PPA.

Brief scope of power procurement is given as under:

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Sr. No	Scope	Details
12.	Contract Period (in years)	25 years
13.	Requisitioned Capacity (MW)	<b>1000 MW for Seasonal Load</b> supply of power. During the evaluation of Bids and based on the competitiveness of the bid process, the Authorized Representative retains the right to increase or decrease the Requisitioned Capacity by a quantum of twenty percent (20%) of the quantum indicated herein.
14.	Minimum Bid Capacity <sup>9</sup>	<b>100 MW</b>
15.	Load Requirement	<b>1000 MW</b>
16.	Duration of Power Procurement	For <b>seasonal requirement</b> : Duration of power requirement in months of ' <b>October to March</b> ' throughout the Contract Period.
17.	Scheduled Delivery Date	31.08.13 However, the Scheduled Delivery Date can be preponed on mutual consent of the Seller and the Procurer(s), subject to availability of transmission capacity, as per the provisions of the PPA.
18.	Interconnection Point	Bidders shall submit their Quoted Tariff at the Interconnection Point and specify the same in the Financial Bid as per Format 4.10 of this RFP; The PPA shall be signed between the Successful Bidder / Project Company and the Procurer(s) for the Contracted Capacity at the Interconnection Point.
19.	Injection Point	Bidders shall specify in their Financial Bid, the Injection Point nearest to their generation source which shall be used for evaluation purpose.;

<sup>9</sup> The Minimum Bid Capacity shall be decided by the Procurer/ Authorized Representative, which may generally be the lower of the two values: 10% of the Requisitioned Capacity or 50 MW. However, the Procurer/Authorized Representative shall be free to determine any quantum of power as the Minimum Bid Capacity.

Sr. No	Scope	Details
		<p>shall be borne by the Seller and no transmission charges for such intrastate transmission link shall be payable by the Procurer(s). However percentage loss level of such intrastate transmission link shall be specified by the Bidder in its Financial Bid and shall be considered for evaluation.</p> <ul style="list-style-type: none"> <li>In case of Injection Point being a Delivery Point, no transmission charges or losses shall be considered for evaluation.</li> </ul>
20.	Transmission Losses	The transmission losses from the Interconnection Point to the Delivery Point shall be borne by the Procurer(s).
21.	Arranging Transmission Access	<p>Seller(s) shall be responsible for arranging transmission access from the Injection Point to the Delivery Point. Such arrangement shall be as per the regulations specified by the Appropriate Commission, as amended from time to time.</p> <p>The Seller(s) shall initiate action for development of the requisite transmission system from Injection Point to the Delivery Point by co-coordinating with the CTU and concerned STU in accordance with the relevant regulations of the Appropriate Commission.</p> <p>The Seller shall be wholly responsible to arrange transmission access from the Interconnection Point to the Injection Point.</p> <p>The Procurer(s) shall be wholly responsible to arrange transmission access from the station switchyard of the generation source in case of the generating source being in the same state as that of the Procurer(s).</p>
22.	Transmission Charges	<p>For transmission of power from the Injection Point to the Delivery Point, the Seller(s) shall be responsible to enter into a commercial arrangement with the CTU/STU, as the case may be, to bear the transmission charges as notified by the CERC/SERC, as the case may be, from time to time. Further, the Seller(s) shall then claim the reimbursement of such Transmission Charges from the Procurer(s).</p> <p>Transmission Charges, if any, for transmitting</p>

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Sr. No	Scope	Details
		power from the Interconnection Point to the Injection Point shall be borne by the Seller and shall not be reimbursed by the Procurer(s).

#### 1.6.2 Evacuation of Power

The responsibility for evacuation of power beyond the Delivery Point will be of the Procurer(s), who shall ensure the interconnectivity of STU Interface(s) for evacuation of power.

#### 1.6.3 Allocation of Requisitioned Capacity

The tentative allocation of Requisitioned Capacity among the Procurers is as per the following table.

Name of the Procurer	Power procurement by Procurer (MW)	Percentage of Requisitioned Capacity (%)
2. Jaipur Vidyut Vitran Nigam Limited (JVVNL)	360 MW	36 %
7. Ajmer Vidyut Vitran Nigam Limited (AVVNL)	360 MW	36 %
8. Jodhpur Vidyut Vitran Nigam Limited (JdVVNL)	280 MW	28 %
<b>Total</b>	<b>Requisitioned Capacity = 1000 MW</b>	<b>100%</b>

The Authorized Representative reserves the right to modify the above allocation among the Procurers, subject to a maximum variation of twenty percent (20%) of the capacity proposed to be procured by each Procurer. Such variation shall be admissible till the Effective Date.

The total Contracted Capacity of the Successful Bidder(s) shall be allocated and apportioned to the Procurers in the same proportion as mentioned above.

#### 1.6.4 Details of the Procurer(s) containing the following information are enclosed separately as per Format 5.2 of this RFP;

- e) Last three years of the available audited accounts
- f) Last three years of the aggregate technical and commercial losses
- g) Details regarding existing tariff structure, consumer base
- h) Details relating to escrow arrangement

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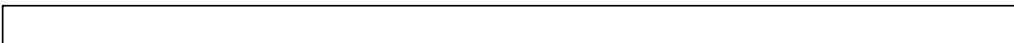
1.6.5 In accordance with Para 3.1 (i) of the Bidding Guidelines, the Authorized Representative has already sent an intimation to the Appropriate Commission about the initiation of the bidding process.

Further, the Procurer(s) has already obtained the approval of the Appropriate Commission for the quantum of power proposed to be procured.

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# **SECTION - 2**

## **INFORMATION AND INSTRUCTIONS FOR BIDDERS**



## SECTION – 2

### 3 INFORMATION AND INSTRUCTIONS FOR BIDDERS

#### 3.1 Qualification Requirements

2.1.10 The Bidder should be a corporate entity duly incorporated under the relevant laws. Subject to Clauses 2.1.3 and 2.1.4, the Bidder must meet the Qualification Requirements independently as Bidding Company or as a Bidding Consortium with one of the Members acting as the Lead Member of the Bidding Consortium. Bidder will be declared as a Qualified Bidder based on meeting the Qualification Requirements specified below and as demonstrated based on the documentary evidence submitted by the Bidder in the Bid. Further, a Bidding Consortium can participate in the bidding process if any Member of the Consortium has purchased the RFP.

**Note:** A bidding company can be a generation company, a transmission licensee (owning generation facilities), a distribution company, a Trading Licensee or any other corporate entity which is willing to participate in the bidding process for providing supply of power to the Procurer(s).

2.1.11 The Bidder must fulfill the following Qualification Requirements specified in Clause 2.1.2.1 and 2.1.2.2:

2.1.11.1 **Networth:** Networth should be equal to or greater than the value **calculated at the rate of Rs. 0.50 Crore per MW of capacity offered by the Bidder in its Bid or equivalent USD** [Calculated as per provisions mentioned in Note below]. The computation of networth shall be based on unconsolidated audited annual accounts of any of the last three (3) financial years immediately preceding the Bid Deadline.

**Note:** For the Qualification Requirements, if data is provided by the Bidders in foreign currency, equivalent rupees of Networth will be calculated using bills selling exchange rates (card rate) USD / INR of State Bank of India prevailing on the date of closing of the accounts for the respective financial year as certified by the Bidders' banker.

For currency other than USD, Bidders shall convert such currency into USD as per the exchange rates certified by their banker prevailing on the relevant date and used for such conversion.

If the exchange rate for any of the above dates is not available, the rate for the immediately available previous day shall be taken into account.]

In case of more than one Financial Bid being submitted by the Bidder, the Networth must be fulfilled by such Bidder for the sum total of the capacities being offered by it in its Financial Bids.

Networth shall be computed in the following manner by the Bidder:

<b>Networth</b>	
=	Paid up share capital
Add:	Reserves
Subtract:	Revaluation Reserves

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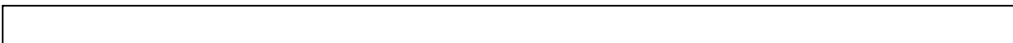


Subtract: Intangible Assets  
Subtract: Miscellaneous Expenditures to the extent not written off and carry forward losses

For the purposes of meeting financial requirements, only unconsolidated audited annual accounts shall be used. However, audited consolidated annual accounts of the Bidder may be used for the purpose of financial requirements provided the Bidder has at least twenty six percent (26%) equity in each company whose accounts are merged in the audited consolidated accounts and provided further that the financial capability of such companies (of which accounts are being merged in the consolidated accounts) shall not be considered again for the purpose of evaluation of the Bid.

Bidders shall furnish documentary evidence as per the Format 4.6 (A), duly certified by Managing Director / Director/ Chief Executive Officer, being a full time director on the Board of the Company/ Manager, and the Statutory Auditor in support of their financial capability.

- 2.1.11.2 **Consents, Clearances and Permits:** The Bidder shall submit documentary evidence with regards to the following (In case the Bidder is an Trading Licensee, the Bidder shall ensure that the entity developing the power station has obtained such Consents, Clearances and Permits and the Bidder shall submit documentary evidence regarding the same in its Bid):
- a. Land: Requirement of land would be considered as indicated in the proposal filed with the competent authority for seeking environmental clearance. The Bidder should have acquired and have taken possession of at least 50% of the area of the land as mentioned above. In case of land to be acquired under the Land Acquisition Act, 1894, the Bidder shall submit copy of notification issued for such land under Section 4 of the Land Acquisition Act, 1894. In all other cases, the Bidder shall furnish documentary evidence (sale deed or any other equivalent documents) to establish the ownership of such land.
  - b. Fuel:
    - i. In case of domestic coal, the Bidder shall have made firm arrangements for fuel tie up either by way of mine allocation or fuel linkage. Such arrangement shall be for the quantity of fuel required to generate power from the power station at Normative Availability for the total installed capacity for the term of the PPA.
    - ii. In case of imported coal, the Bidder shall have either acquired mines having proven reserves for at least fifty percent (50%) of the quantity of coal required to generate power from the power station at Normative Availability for the total installed capacity OR shall have long term fuel supply agreement for at least fifty percent (50%) of the quantity of fuel required to generate power from the generation source for the total installed capacity for the term of the PPA.
    - iii. In case of domestic gas, the Bidder shall have made firm arrangements for fuel tie up by way of long term fuel supply agreement for the quantity of fuel required to generate power from the generation source for the total installed capacity for the term of the PPA.
    - iv. In case of RLNG, the Bidder shall have made firm arrangements for fuel tie up by way of long term fuel supply agreement for at least fifty



percent (50%) of the quantity of fuel required to generate power from the generation source for the total installed capacity for the term of the PPA.

- c. Water: The Bidder shall have acquired approval from the concerned state irrigation department or any other relevant authority for the quantity of water required for the power station.
- d. Environmental Clearance: The Bidder shall have submitted the requisite proposal, for the environmental clearance, to the concerned administrative authority responsible for according final approval in the central / state govt. as the case may be.
- e. Forest Clearance: (if applicable for the land of power station) The Bidder shall have submitted the requisite proposal, for the forest clearance, to the concerned administrative authority responsible for according final approval in the central / state govt., as the case may be.
- f. If the identified generation source is an existing power station, the Bidder shall submit the documentary evidence regarding commissioning of the power station and available surplus capacity equivalent to the capacity offered in its Bid in lieu of the requirements specified above in this Clause 2.1.2.2 (a) to (e).
- g. If the Bidder is a Trading Licensee, it shall have executed exclusive power purchase agreement(s) for the quantity of power offered in its Bid and shall provide a copy of the same as part of its Bid.

The documentary evidence as per Format 4.6 (B) shall be duly certified by Managing Director/ Director / Chief Executive Officer, being a full time director on the Board of the Company /Manager, in support of the above Consents, Clearances and Permits and other requirements.

2.1.11.3 In case the Bidder is a Bidding Company and wishes to incorporate a Project Company, all such Consents, Clearances and Permits if obtained in the name of a company other than the Project Company, the Bidder shall be responsible to get these Consents, Clearances and Permits transferred in the name of the Project Company in the event of being selected as the Successful Bidder.

In case the Bidder is a Bidding Consortium, all such Consents, Clearances and Permits shall be obtained in the name of the Lead Member and the Bidder shall be responsible to get these Consents, Clearances and Permits transferred in the name of the Project Company in the event of being selected as the Successful Bidder.

2.1.11.4 The Bidder shall undertake (as per Format 4.7) not to submit any other bid, on the basis of the same generation source and quantum of power from such source as mentioned in its Bid, in any bid process till the time of selection of Successful Bidder and issue of LOI or the termination of the process, which ever is earlier subject to a maximum period of one hundred and twenty (120) days from the Bid Deadline. If the Bidder is a Trading Licensee, it shall undertake (as per Format 4.7) not to submit any bid, on the basis of power purchase agreement submitted along



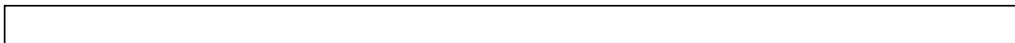
with its Bid for the same quantum of power and generation source specified therein, in any bid process till the time of selection of Successful Bidder and issue of LOI or the termination of the process, which ever is earlier subject to a maximum of period of one hundred and twenty (120) days from the Bid Deadline.

Bidders shall furnish the undertaking as per Format 4.7, duly certified by Managing Director/ Director / Chief Executive Officer, being a full time director on the Board of the Company /Manager.

- 2.1.12 If the Bid is submitted by a Bidding Consortium the financial requirement shall be met individually and collectively by all the Members in the Bidding Consortium. The financial requirement to be met by each Member of the Bidding Consortium shall be computed in proportion to the equity commitment made by each of them in the Project Company as per the Consortium Agreement (Format 4.3), forming part of its Non Financial Bid. Any Consortium, if selected as the Successful Bidder, shall, for the purpose of supply of power, incorporate a Project Company with equity participation by the Members as provided in the Consortium Agreement (Format 4.3) within fifteen (15) days of the issue of Letter of Intent.
- 2.1.13 Any Bidding Company may choose to incorporate a Project Company for the purpose of supply of power. If Bidding Company desires to incorporate a Project Company, it shall indicate this in Format 4.5.
- 2.1.14 The Bidder may seek qualification on the basis of financial capability of its Parent Company and / or it's Affiliate(s) for the purpose of meeting the Qualification Requirements. In case of the Bidder being a Bidding Consortium, any Member may seek qualification on the basis of financial capability of its Parent Company and / or its Affiliate(s). The financial capability of a particular Parent Company (ies) and / or Affiliates, shall not be used by more than one Bidder.

The determination of the relationship of Parent Company or Affiliate with the Bidding Company or with the Member of the Bidding Consortium, including the Lead Member, shall be as existing on the date seven (7) days prior to the Bid Deadline. Documentary evidence in form of a certification from a practicing Company Secretary or Statutory Auditor to establish such relationship shall be furnished by the Bidder along with the Bid.

If the Financially Evaluated Entity is an entity other than the Bidding Company or a Member of a Bidding Consortium, the Bidding Company or Member relying on such Financially Evaluated Entity will have to submit a legally binding undertaking supported by a Board resolution as per Format 4.8, from the Financially Evaluated Entity or its Parent Company / Ultimate Parent Company, as the case may be, that the obligation of the Bidding Company or the Member of the Consortium to submit a Contract Performance Guarantee, if selected, shall be deemed to be the obligations of the Financially Evaluated Entity or its Parent Company / Ultimate Parent Company, as the case may be, and in the event of any default whatsoever by the Successful Bidder in submitting the Contract Performance Guarantee, the same shall be submitted by such Financially Evaluated Entity or by the Parent Company / Ultimate Parent Company, as the case may be.



- 2.1.15 A Bidder shall submit only one response in the same bidding process, individually as Bidding Company or as a Member of a Bidding Consortium (including the Lead Member). It is further clarified that any of the Parent Company / Affiliate / Ultimate Parent Company of the Bidding Company or a Member of a Bidding Consortium shall not separately participate directly or indirectly in the same bidding process. Further, if any Bidder has a Conflict of Interest with other Bidder(s) participating in the same bidding process, the Bid of all such Bidder(s) shall be rejected.
- 2.1.16 Notwithstanding anything stated above, the Authorized Representative reserves the right to verify the authenticity of the documents submitted for meeting the Qualification Requirements and may request for any additional information / documents. The Authorized Representative reserves the right at its sole discretion to contact the Bidder's bank, lenders, financing institutions and any other persons as necessary to verify the Bidder's information/documents for the purpose of qualification.
- 2.1.17 If at any stage of the bidding process, any order / ruling is found to have been passed in the last five (5) years preceding the Bid Deadline by an Appropriate Commission or a competent court against any Bidder or its Affiliates for its material breach of any contract for supply of power having duration of contract in excess of one (1) year to any licensee in India, Bids from such Bidders shall be liable to be rejected. All Bidders shall confirm in accordance with Format 4.1 that no such order / ruling has been passed by an Appropriate Commission or a competent court against it or its Affiliates. Each Bidder shall also confirm that the bid security submitted by the Bidder or its Affiliates has not been forfeited either partly or wholly in any bid process under Case-1 or case -2 bidding procedure in the last five (5) years preceding the Bid Deadline.
- 2.1.18 The Qualified Bidder(s) will be required to continue to maintain compliance with the Qualification Requirements throughout the bidding process and till the execution of the PPA. Where the Financially Evaluated Entity is not the Bidding Company or a Member of a Bidding Consortium, as the case may be, the Bidding Company or Member shall continue to be an Affiliate of the Financially Evaluated Entity till execution of the PPA. Failure to comply with the aforesaid provisions shall make the Bid liable for rejection at any stage.

### **3.2 Submission of Bid by the Bidder**

- 2.2.12 The information and/or documents shall be submitted by the Bidder as per the formats specified in Section 4 (Formats for RFP) of this document.
- 2.2.13 Strict adherence to the formats wherever specified, is required. Wherever, information has been sought in specified formats, the Bidder shall refrain from referring to brochures / pamphlets. Non-adherence to formats and / or submission of incomplete information may be a ground for declaring the Bid as non-responsive. Each format has to be duly signed and stamped by the authorized signatory of the Bidder.
- 2.2.14 The Bidder shall furnish documentary evidence in support of meeting Qualification Requirements to the satisfaction of the Authorized Representative and shall furnish unconsolidated / consolidated audited annual accounts in support of meeting financial requirement, which shall consist of unabridged balance sheet, profit and loss account, profit appropriation account, auditors report, etc., as the case may be, of Bidding

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Company or each Member of a Consortium or Financially Evaluated Entity for the last three (3) financial years immediately preceding the Bid Deadline for the purpose of calculation of Networth.

#### **2.2.15 Bid submitted by a Bidding Consortium**

2.2.15.1 The Bid shall contain a legally enforceable Consortium Agreement entered amongst the Members in the Bidding Consortium, designating one of the Members to be the Lead Member (as per Format 4.3). There shall be only one Lead Member which shall continue to hold fifty one percent (51%) equity in the Project Company up to a period of two (2) years after commencement of supply of power and twenty six (26%) for a period of three (3) years thereafter as per provisions of Clause 2.7 of this RFP and Article 13.2 of the PPA. Each Member of the Bidding Consortium shall duly sign the Consortium Agreement making it liable for raising the required funds for its respective equity investment commitment as specified in the Consortium Agreement. In the absence of a duly executed Consortium Agreement, the Bid will not be considered for evaluation and will be rejected.

Provided however that the Lead Member of the Bidding Consortium shall be liable to the extent of one hundred percent (100%) of the total proposed commitment of equity investment in the Project Company, i.e., for both its own liability as well as the liability of the other Members.

Provided further that the Consortium Agreement shall not be amended without the prior written approval of the Authorized Representative.

2.2.15.2 The Lead Member shall designate one person to represent the Consortium in its dealings with the Authorized Representative. The person designated by the Lead Member shall be authorized through a Power of Attorney (as per Format 4.2 (a)) to perform all tasks including, but not limited to providing information, responding to enquiries, signing of Bid on behalf of the Consortium, etc. Additionally, the Bid shall also contain a Power of Attorney in original (as per Format 4.2 (b)) in favor of the Lead Member issued by the other Members of the Consortium.

2.2.15.3 The Bid shall also contain signed letter of consent as per Format 4.4 from each Member of the Consortium confirming that the Bid has been reviewed and each element of the Bid is agreed to by them including but not limited to the investment commitment in the Project Company.

#### **2.2.15.4 Point of contact in case of Bidding Consortium**

In case of Bid being submitted by a Consortium, the Lead Member of the Consortium shall be the single point of contact for the purposes of the Bid process, before the date of signing of last of the RFP Documents. Settlement of any dispute amongst the Consortium Members shall not be the responsibility of the Authorized Representative and the Authorized Representative shall not bear any liability whatsoever on this account.

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#### **2.2.16 Bid submitted by a Bidding Company**

2.2.16.1 The Bidding Company should designate one person to represent the Bidding Company in its dealings with the Authorized Representative. The person should be authorized to perform all tasks including, but not limited to providing information, responding to enquiries, signing of Bid etc. The Bidding Company should submit, along with Bid, a Power of Attorney in original (as per Format 4.2 (a)), authorizing the signatory of the Bid.

#### **2.2.17 Clarifications and Pre-bid Meeting**

2.2.17.1 The Authorized Representative will not enter into any correspondence with the Bidders, except to furnish clarifications on the RFP and RFP Documents, if necessary. The Bidders may seek clarifications or suggest amendments to RFP and RFP Documents in writing, through a letter or by fax (and also soft copy by e-mail) to reach the Authorized Representative at the address, date and time mentioned in Clause 2.8. For any such clarifications or amendments, the Bidder should adhere to the Format 5.6 of the RFP. For the avoidance of any doubt, it is hereby clarified that there shall be no extension in the Bid Deadline on account of clarifications sought in accordance with this Clause 2.2.6.

2.2.17.2 The Bidder(s) or their authorized representative(s) is / are invited to attend pre-bid meeting(s), which will take place on date(s) as specified in Clause 2.8 , or any such other date as notified by the Authorized Representative. The time and venue of such meeting would be intimated at a later stage.

2.2.17.3 The purpose of the pre-bid meeting will be to clarify any issues regarding the RFP, including in particular, issues raised in writing by the Bidders as per the provisions of Clause 2.2.6.1.

2.2.17.4 Non-attendance at the pre-bid meeting will not be a cause for disqualification of a Bidder.

2.2.17.5 The Authorized Representative is not under any obligation to entertain / respond to suggestions made or to incorporate modifications sought for.

2.2.18 The drafts of the following RFP Documents have been attached to this RFP;

- d. PPA as per Format 5.5 Enclosure -1;
- e. Default Escrow Agreement as per Format 5.5 Enclosure -2;
- f. Agreement to Hypothecate-cum-deed of Hypothecation as per Format 5.5 Enclosure -3.

Upon finalization of the RFP Documents after the amendments as envisaged in Clause 2.3, the Procurer(s) shall initial all the pages of the PPA and the other RFP Documents and deliver copies of the same to the Bidders at least forty five (45) days prior to the Bid Deadline.

The RFP Documents shall be signed in required number of originals so as to ensure that one original is retained by each party to the agreement(s).

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## 2.2.19 Incorporation of a Project Company

2.2.19.1 In case of the Successful Bidder being a Bidding Consortium, it shall, within fifteen (15) days of the issue of the Letter of Intent, incorporate a Project Company provided such a Project Company has not been incorporated by the Bidder prior to the submission of the Bid. In case the Project Company has already been incorporated prior to the submission of the Bid as specified in the Consortium Agreement such Project Company shall be responsible to execute the RFP Documents. The investment in the Project Company shall be as per provisions of the Consortium Agreement and shall be subject to the provisions of Clause 2.7 of this RFP.

In case of the Successful Bidder being Bidding Company and choosing to incorporate a Project Company for supply of power, it shall incorporate the Project Company within fifteen (15) days of the issue of the Letter of Intent. In case the Project Company has already been formed by such Bidding Company prior to the submission of the Bid, the Bidding Company shall provide the details of such Project Company in its Bid. The investment in such Project Company incorporated by the Successful Bidder may be from any of the Affiliates and / or Ultimate Parent and shall be subject to the provisions of Clause 2.7 of this RFP.

2.2.19.2 The Project Company shall execute the RFP Documents and be responsible for supply of power to the Procurer(s) as per the provisions of the PPA.

2.2.20 Within thirty (30) days of the issue of the Letter of Intent, the Successful Bidder/ Project Company, as the case may be, shall:

- c. Provide a valid Contract Performance Guarantee as per the provisions of Clause 2.13 of this RFP; and thereafter
- d. Execute the PPA and other RFP Documents in required number of originals so as to ensure that one original is retained by each party to the agreement(s).

Provided that, if for any reason attributable to the Procurer(s), the above activities are not completed by the Successful Bidder(s)/ Project Company within the above period of thirty (30) days of the issue of Letter of Intent as mentioned in this Clause, such period of thirty (30) days shall be extended, on a day for day basis till the end of the Bid validity period.

If the generation source of the Successful Bidder is in the same state as that of the Procurer or the Successful Bidder intends to connect its generation source to the STU Interface through a dedicated transmission line, then within thirty (30) days of the issue of the Letter of Intent, the Procurer(s) and the Successful Bidder/Project Company shall be jointly responsible for agreement on the Delivery Point(s) for supplying power to the Procurer(s) and for incorporating the same in the PPA.

2.2.21 All stamp duties payable for executing the RFP Documents shall be borne by the Successful Bidder.

2.2.22 If the Successful Bidder(s) / Project Company fails or refuses to comply with any of its obligations under Clauses 2.2.8 and 2.2.9, and provided that the Procurer (s) and / or

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other parties to the respective RFP Documents are willing to execute the said documents, such failure or refusal on the part of the Successful Bidder/ Project Company shall constitute sufficient grounds for cancellation of the Letter of Intent. In such cases, the Authorized Representative shall be entitled to invoke the Bid Bond of the Successful Bidder(s) / Project Company.

### 3.3 Amendment of RFP

2.3.3 The Authorized Representative, for any reason, whether at its own initiative or in response to clarifications requested by any Bidder may modify the RFP, including the timelines specified in Clause 2.8.2, by issuance of addendum / modification / errata and / or a revised document. Revisions or amendments in the Bidding Guidelines may cause the Authorized Representative to modify, amend or supplement this RFP, including the RFP Documents to be in conformance with the Bidding Guidelines. Such document shall be notified in writing through a letter or fax or e-mail to all the entities to which the RFP has been issued and shall be binding on them. Such documents shall also be made available on the same website, [www.rajenergy.com](http://www.rajenergy.com) & [www.rvnp.co.in](http://www.rvnp.co.in). The Authorized Representative shall not be responsible for any delay in receipt of the addendum / modification / errata and / or revised document and receipt of the same by the Bidders shall be presumed by the Procurer(s) upon taking all reasonable steps to notify the Bidders in accordance with the means mentioned in the preceding sentence. In order to provide reasonable time to the Bidders to take the modification into account in preparing their Bid, or for any other reasons, the Authorized Representative may, at its discretion, extend the Bid Deadline. Late receipt of any addendum / modification / errata and / or revised document will not relieve the Bidder from being bound by that modification or the Bid Deadline. All such amendments/modifications shall be issued at least forty-five (45) days prior to the Bid Deadline.

2.3.4 In case Bidders need any further clarifications not involving any amendments in respect of the final RFP and RFP Documents, they should ensure that written request for such clarification is delivered to the Authorized Representative at least fifteen (15) days prior to the Bid Deadline as mentioned in Clause 2.8, the Authorized Representative may issue clarifications only, at its sole discretion, which is considered reasonable by it. Any such clarification issued shall be sent to all the Bidders to whom the RFP has been issued. Such clarifications shall also be made available on the same website, [www.rajenergy.com](http://www.rajenergy.com) & [www.rvnp.co.in](http://www.rvnp.co.in). Clarifications sought after this date shall not be considered in any manner and shall be deemed not to have been received. There shall be no extension in Bid Deadline on account of clarifications sought as per this clause.

### 3.4 Bidding Process

#### 2.4.2 Bid Formats

2.4.1.4 The Bid in response to this RFP shall be submitted by the Bidders in the manner provided in Clause 2.10. The Bid shall comprise of the following:

**(A) Envelope I – Non- Financial Bid comprising of:**

- xiv. Covering Letter as per prescribed Format 4.1

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- xv. Original power of attorney issued by the Bidding Company or the Lead Member of the Consortium, as the case may be, in favor of the authorized person signing the Bid, in the form attached hereto as Format 4.2.(a). Additionally, in case of a Bidding Consortium, the Bid should also contain a Power of Attorney in original (as per Format 4.2 (b)) in favor of the Lead Member issued by the other Members of the Consortium.

Provided that in the event the Bidding Company or any Member of the Bidding Consortium, as the case may be, is a foreign entity, it may submit Board resolutions in place of Power of Attorney for the purpose of fulfilling the above requirements;

Provided further that such Board resolutions, as specified above, in case of a foreign entity, shall be supported by an unqualified opinion issued by the legal counsel of such foreign entity, stating that the Board resolutions are in compliance with the applicable laws of the respective jurisdictions of the issuing company and the authorizations granted therein are true and valid. In the case of a foreign entity, in the event, any and/or all of the documents/resolutions are in any other language other than English, then a duly notarized copy of such translation shall also be required to be submitted.

- xvi. Consortium Agreement as per prescribed Format 4.3;
- xvii. Letter of Consent from the Consortium Members as per prescribed Format 4.4;
- xviii. Bidder's composition and ownership structure as per prescribed Format 4.5;
- xix. Details for meeting Qualification Requirement as per the prescribed Format 4.6 along with documentary evidence for the same as specified in Clause 2.1;
- xx. Bidders' Undertaking as per the prescribed Format 4.7 (A) and Undertakings from the Financially Evaluated Entity or its Parent Company / Ultimate Parent Company as per Format 4.7 (B);

Provided further, in case the Bidding Company or Member of a Consortium, (as the case may be) holds at least twenty-six percent (26%) equity in such Financially Evaluated Entity, whose credentials have been considered for the purpose of meeting the Qualification Requirements as per the RFP, undertaking as per Format 4.7 (B) shall not be required from the Financially Evaluated Entity;

- xxi. Board Resolution of the Financially Evaluated Entity of the Bidding Company or each Member of the Bidding Consortium as per prescribed Format 4.8, duly certified by the Company Secretary or the Managing Director undertaking to provide the entire Contract Performance Guarantee in the event of failure of the Bidding Company / Member of the Consortium to do so; or

Board Resolution of the Parent or Ultimate Parent of the Financially Evaluated Entity referred to above, as per prescribed Format 4.8, duly certified by the Company Secretary or the Managing Director undertaking to provide the entire Contract Performance Guarantee in the event of failure of the Bidding Company / Member of the Consortium to do so.



Provided that such Board resolutions, as specified above, in case of a foreign entity, shall be supported by an unqualified opinion issued by the legal counsel of such foreign entity, stating that the board resolutions are in compliance with the applicable laws of the respective jurisdictions of the issuing company and the authorizations granted therein are true and valid.

- xxii. Bid Bond, as per the prescribed format 4.9;
- xxiii. Checklist for Bid submission requirements as prescribed in Format 4.11;
- xxiv. Disclosure as per Format 4.12 regarding participation of any related companies in this bidding process;
- xxv. Details of generation source and primary fuel as prescribed in Format 4.13;
- xxvi. Initialed RFP Documents as per Format 5.5.

**(B) Envelope II – Financial Bid as per Format 4.10.**

The Bidder shall inter-alia take into account the following while preparing and submitting the Financial Bid as per the prescribed Format 4.10, duly signed by an authorized signatory.

- xiii. The Bidder shall submit their Quoted Tariff at the Interconnection Point and shall specify the same in its Financial Bid as prescribed in Format 4.10 of this RFP;
- xiv. More than one Financial Bid can be submitted by the Bidder for supply of power provided that not more than one Financial Bid from a Bidder is from the same generation source and each Financial Bid is separately submitted in accordance with this Clause 2.4.1.1 (B). For these purposes, more than one unit at the same plant location but using different fuel/different fuel source shall be considered as the same generation source.
- xv. The Qualification Requirements for the Bidder would be evaluated for the total quantum of power offered by a Bidder from various generation sources:
- xvi. The Bidder may quote for any quantum of power up to the Requisitioned Capacity for the entire term of the PPA, subject to the Minimum Bid Capacity.
- xvii. From each generation source, the Bidder may submit fractions of total capacity offered which it is willing to supply at the same quoted tariff as specified in Format 4.10.
- xviii. The Bidder shall quote the Quoted Escalable Capacity Charges and Quoted Non Escalable Capacity Charges. In case of Quoted Escalable Capacity Charges, the Bidder shall quote charges only for the first Contract Year after commencement of supply of power as per the terms of the PPA.
- xix. The Quoted Escalable Capacity Charges and Quoted Non Escalable Capacity

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Charges for each Contract Year shall be based on the Normative Availability and shall include the cost of secondary fuel.

- xx. Bidders shall have the option to quote firm Quoted Capacity Charges and / or firm Quoted Energy Charges for the term of the PPA, i.e. where the Quoted Escalable Capacity Charges and / or Quoted Escalable Energy Charges shall be 'nil' for all the Contract Years.
- xxi. The Bidder shall quote the following Quoted Energy Charges as applicable.

<i>Scenario 1</i>	<i>Scenario 2</i>	<i>Scenario 3</i>	<i>Scenario 4</i>	<i>Scenario 5</i>	<i>Scenario 6</i>
<b>Power generation source with captive coal block</b>	<b>Power generation source linkage based coal</b>	<b>Power generation source with imported coal</b>	<b>Power generation source with imported gas (RLNG)</b>	<b>Power generation source with domestic (pipeline) gas</b>	<b>Power generation source with hydro</b>
Quoted Escalable Energy Charge (in Rs./kWh)	Quoted Escalable Energy Charge (in Rs./kWh)	Quoted Escalable Energy Charge (in US\$/kWh)	Quoted Escalable Energy Charge (in US\$/ kWh)	Quoted Escalable Energy Charge (in Rs./kWh)	Quoted Non Escalable Energy Charges (in Rs./kWh)
Quoted Non-Escalable Energy Charge(in Rs./kWh)	Quoted Non-Escalable Energy Charge(in Rs./kWh)	Quoted Non-Escalable Energy Charge (in US\$/kWh)	Quoted Non-Escalable Energy Charge (in US\$/ kWh)	Quoted Non-Escalable Energy Charge (in Rs./kWh)	
Quoted Escalable Inland Transportation Charge (in Rs./kWh)	Quoted Escalable Inland Transportation Charge (in Rs./kWh)	Quoted Escalable Overseas Transportation Charge (in US\$/kWh)	Quoted Escalable Overseas Transportation Charge (in US\$/kWh)	Quoted Escalable Inland Transportation Charge (in Rs./kWh)	
Quoted Non Escalable Inland Transportation Charge (in Rs./kWh)	Quoted Non Escalable Inland Transportation Charge (in Rs./kWh)	Quoted Escalable Inland Transportation Charge (in Rs./kWh)	Quoted Escalable Inland Transportation Charge (in Rs./kWh)	Quoted Non Escalable Inland Transportation Charge (in Rs./kWh)	
		Quoted Non Escalable Overseas Transportation Charge (in US\$/kWh)	Quoted Non Escalable Overseas Transportation Charge (in US\$/kWh)		
		Quoted Non Escalable Inland Transportation Charge (in Rs./kWh)	Quoted Non Escalable Inland Transportation Charge (in Rs./kWh)		

<i>Scenario 1</i>	<i>Scenario 2</i>	<i>Scenario 3</i>	<i>Scenario 4</i>	<i>Scenario 5</i>	<i>Scenario 6</i>
<b>Power generation source with captive coal block</b>	<b>Power generation source linkage based coal</b>	<b>Power generation source with imported coal</b>	<b>Power generation source with imported gas (RLNG)</b>	<b>Power generation source with domestic (pipeline) gas</b>	<b>Power generation source with hydro</b>
		Quoted Escalable Fuel Handling Charge (in Rs./kWh)	Quoted Escalable Fuel Handling Charge (in Rs./kWh)		
		Quoted Non-Escalable Fuel Handling Energy Charge (in Rs./kWh)	Quoted Non-Escalable Fuel Handling Energy Charge (in Rs./kWh)		

- xxii. Ratio of minimum and maximum Quoted Capacity Charges during the term of the PPA shall not be less than zero point seven (0.7) and this ratio shall be applied only at the Bid evaluation stage on the Quoted Capacity Charges after duly escalating the Quoted Escalable Capacity Charge on the basis of the escalation rates specified in Clause 3.4.4.
- xxiii. The Quoted Tariff, as in Format 4.10, shall be an all inclusive Tariff up to the Interconnection Point and no exclusions shall be allowed. The Bidder shall take into account all costs including capital and operating costs, statutory taxes, levies, duties while quoting such Tariff. It shall also include any applicable transmission costs and transmission losses from the generation source up to the Interconnection Point. Availability of the inputs necessary for supply of power shall be ensured by the Seller and all costs involved in procuring the inputs (including statutory taxes, duties, levies thereof) at the plant location must be reflected in the Quoted Tariff. Appropriate transmission charges from the Injection Point to the Delivery Point as per Format 5.10 shall be added for Bid evaluation purpose.
- xxiv. The Bidders should factor in the cost of the secondary fuel into the Quoted Tariff and no separate reimbursement shall be allowed on this account.

#### **2.4.1.5 Commencement of Supply of Power to Procurer(s)**

The Seller shall at all times be responsible, at its own cost and risk for the commencement of supply power to the Procurer(s) as per the terms of the PPA.

- 2.4.1.6 Wherever information has been sought in specified formats, the Bidders shall furnish the details as per the prescribed formats and shall refrain from referring to any other document for providing any information required in the prescribed format.

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### 3.5 The Bidder should note that:

- (a) If any Bidder conceals any material information or makes a wrong statement or misrepresents facts or makes a misleading statement in its Bid, in any manner whatsoever in order to create circumstances for the acceptance of its Bid, the Authorized Representative reserves the right to reject such Bid or cancel the Letter of Intent, if issued. If such event is discovered after the Effective Date, consequences specified in the PPA shall apply.
- (b) If for any reason the Bid of any Successful Bidder is rejected or Letter of Intent issued to such Successful Bidder is cancelled, the Authorized Representative may:
  - i. Consider the next lowest Financial Bid from other than the Successful Bidder(s) whose Bids are responsive and valid; or
  - ii. Annul the bid process; or
  - iii. Take any such measure as may be deemed fit in the sole discretion of the Authorized Representative.
- (c) The Authorized Representative reserves the right to accept the offer of the Bidder for any quantum of power up to the quantum offered by it, subject to the Minimum Bid Capacity, and considering the balance Requisitioned Capacity (after considering the quantum of power offered by Successful Bidder(s) in Clause 3.5.3).
- (d) Bid submitted by the Bidders, within the Bid Deadline, shall become the property of the Authorized Representative] and shall not be returned to the Bidders;
- (e) Language of the Bid shall be English only;
- (f) Bidders shall mention the name of the contact person and complete address of the Bidder in the covering letter as per Format 4.1;
- (g) The Authorized Representative may, at its sole discretion, ask for additional information/ document and/ or seek clarifications from a Bidder after the Bid Deadline, inter alia, for the purposes of removal of inconsistencies or infirmities in its Bid. However, no change in the substance of the Quoted Tariff shall be sought or permitted by the Procurer/ Authorized Representative.
- (h) Non submission and / or submission of incomplete data / information required under the provisions of the RFP shall not be construed as waiver on the part of the Authorized Representative of the obligation of the Bidders to furnish the said data / information unless the waiver is in writing.
- (i) The Authorized Representative may verify the Bidder's financial data by checking with the Bidder's lenders / bankers / financing institutions / any other person as necessary.

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- (j) The Bidders shall satisfy themselves, on receipt of the RFP, that the RFP is complete in all respects. Intimation of any discrepancy shall be given to the Authorized Representative at the address provided in para 11 of the notification to this RFP immediately. If no intimation is received from any Bidder within ten (10) days from the date of issue of this RFP or from the date on which it was made available on [www.rajenergy.com](http://www.rajenergy.com) & [www.rvpn.co.in](http://www.rvpn.co.in), it shall be considered that the issued document, complete in all respects, has been received by the Bidder.
- (k) This RFP document includes statements, which reflect the various assumptions arrived at by the Authorized Representative in order to give a reflection of the current status in the RFP. These assumptions may not be entirely relied upon by the Bidders in making their own assessments. This RFP does not purport to contain all the information each Bidder may require and may not be appropriate for all persons. Each Bidder should conduct its own investigations and analysis and should check the accuracy, reliability and completeness of the information in this RFP and obtain independent advice from appropriate sources.

### **3.6 Bidder to inform itself fully**

- 2.6.4 The Bidder shall make independent enquiry and satisfy itself with respect to all the required information, inputs, conditions and circumstances and factors that may have any effect on its Bid. Once the Bidder has submitted the Bid, the Bidder shall be deemed to have examined the laws and regulations in force in India, the grid conditions, and fixed its price taking into account all such relevant conditions and also the risks, contingencies and other circumstances which may influence or affect the supply of power. Accordingly, the Bidder acknowledges that, on being selected as Successful Bidder, it shall not be relieved from any of its obligations under the RFP Documents nor shall be entitled to any extension of time for commencement of supply or financial compensation for any reason whatsoever.
- 2.6.5 The technical requirements of integrated grid operation are specified in the Indian Electricity Grid Code (IEGC). The Bidders should particularly acquaint themselves with the requirements of connection conditions, operating code for regional grids, scheduling and dispatch code etc. The Bidders are also advised to fully familiarize themselves with the real time grid conditions in India. Information regarding grid parameters such as voltage and frequency is readily available on the websites of Regional Load Dispatch Centres. The protection trip setting of the generation on under frequency df/dt and defense plan are coordinated at the RPC forum in consultation with all stakeholders duly taking into account the design parameters of the various machines.

In their own interest, the Bidders are requested to familiarize themselves with the Electricity Act, 2003, the Income Tax Act 1961, the Companies Act, 1956, the Customs Act, the Foreign Exchange Management Act 1999, IEGC, the Environment Protection Act 1986 and Forest (Conservation) Act 1980, the Land Acquisition Act 1984, the regulations framed by regulatory commissions and all other related acts, laws, rules and regulations prevalent in India, as amended from time to time. The Authorized Representative shall not entertain any request for clarifications from the Bidders regarding the same. Non-awareness of these laws or such information shall not be a reason for the Bidder to request for extension in Bid Deadline. The Bidder



undertakes and agrees that, before submission of its Bid; all such factors as generally stated above, have been fully investigated and considered while submitting the Bid.

- 2.6.6 The Bidder shall familiarize itself with the procedures and time frames required to obtain all Consents, Clearances and Permits required for the supply of power to Procurer(s). The Procurer(s) shall have no liability to obtain any of the Consents, Clearances and Permits required for setting up of the generation facilities and/ or supply of power.

### **3.7 Minimum Equity holding/Equity Lock-In**

- 3.7.1 The aggregate equity shareholding of the Lead Member in case the Successful Bidder is a Bidding Consortium OR the Successful Bidder in case the Successful Bidder is a Bidding Company in the issued and paid up equity share capital of the Seller shall not be less than the following:

- e) Fifty One percent (51%) from Effective Date up to a period of (2) two years after commencement of supply of power; and
- f) Twenty Six (26%) for a period of three (3) years thereafter.

- 3.7.2 Similarly, in case of the Successful Bidder being a Bidding Company, the minimum aggregate equity share holding of the investing entity(ies) in the issued and paid up equity share capital of the Project Company, if formed, shall be the same as specified in Clause 2.7.1.

- 3.7.3 In case of a Bidding Consortium, any Member, other than the Lead Member, shall be allowed to divest its equity as long as the Lead Member holds the minimum equity specified in Clause 2.7.1 (a) and (b) above. In case of a Bidding Company, any investing entity(ies) shall be allowed to divest its equity as long as the other remaining investing entity(ies) hold the minimum aggregate equity specified in Clause 2.7.1(a) and (b) above.

- 3.7.4 The Successful Bidder may invest in the equity share capital of the Project Company through its Affiliate(s) or Ultimate Parent Company or Parent Company (ies). If the Successful Bidder so invests through any Affiliate(s) or Ultimate Parent Company or Parent Company (ies), the Successful Bidder shall be liable to ensure that minimum equity holding/lock-in limits specified above are still maintained.

- 3.7.5 If equity is held by the Affiliates, Parent Company or Ultimate Parent Company, then such Affiliate, Parent Company or Ultimate Parent Company shall be permitted to transfer its shareholding in the Project Company to another Affiliate or to the Parent Company / Ultimate Parent Company. If any such shareholding entity, qualifying as an Affiliate/ Parent Company/ Ultimate Parent Company, is likely to cease to meet the criteria to qualify as an Affiliate / Parent Company / Ultimate Parent Company, the shares held by such entity shall be transferred to another Affiliate / Parent Company / Ultimate Parent Company.

All transfers of shareholding of the Project Company by any of the entities referred to above shall be after prior written permission from the Procurer(s).



3.7.6 For computation of effective equity holding, the equity holding of the Successful Bidder or its Ultimate Parent Company in such Affiliate(s) or Parent Company and the equity holding of such Affiliate(s) or Ultimate Parent Company in the Seller shall be computed in accordance with the example given below:

If the Parent Company or the Ultimate Parent Company of the Successful Bidder A directly holds thirty percent (30%) of the equity in the Seller, then holding of Successful Bidder A in the Seller shall be thirty percent (30%);

If Successful Bidder A holds thirty percent (30%) equity of the Affiliate and the Affiliate holds fifty percent (50%) equity in the Seller, then, for the purposes of ascertaining the minimum equity / equity lock-in requirements specified above, the effective equity holding of Successful Bidder A in the Seller shall be fifteen percent (15%), (i.e., 30% \* 50%);

3.7.7 The provisions as contained in this clause and Article 15.2 of PPA shall override the terms of the Consortium Agreement submitted as a part of Bid.

3.7.8 The provisions contained in Clause 2.7.1 to Clause 2.7.6 shall not be applicable if the Bidding Company is a Trading Licensee or in case of a Bidding Company bidding on its own name, meeting all Qualification Requirements on its own and not forming a separate Project Company. However the Trading Licensee in such case shall ensure that similar provisions as contained in Clause 2.7.1 to Clause 2.7.6 are incorporated in the exclusive power purchase agreement submitted by the Trading Licensee along with its Bid. In such case, the aforesaid provisions shall be applicable with respect to the majority investor in the entity developing the generation source from where the power is proposed to be supplied by the Bidder as mentioned in the Bid by the Trading Licensee. Such majority investor shall be identified and specified in the power purchase agreement submitted by the Trading Licensee.

### 3.8 Due Dates

3.8.1 The Bidders should submit the Bids so as to reach the address specified below by 15:00 hrs (IST) on 01.06.09:

**B. K. Makhija**  
**Chief Engineer (RPPC)**  
**Rajasthan Rajya Vidyut Prasaran Nigam Limited**  
**Vidyut Bhawan, Janpath, Jyoti Nagar**  
**Jaipur-302005 (Rajasthan)**

3.8.2 The following shall be the time schedule for completion of the bidding process

Event	Schedule
Date of issue of RFP	25.02.09
Submission of written clarification/amendments if any, on the RFP / RFP Documents by the Bidders.	12.03.09
Pre-Bid Meeting(s) (if required)	23.03.09

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Revision of RFP and RFP Documents (if required) and issuance of revised RFP and RFP Documents	15.04.09
Bid submission and opening of Non Financial Bid	01.06.09
Opening of Financial Bid of Qualified Bidders	30.07.09
Shortlisting of Successful Bidder(s) and issue of LOI	10.08.09
Signing of RFP Documents	31.08.09

3.8.3 The duration for a Bid process shall not exceed a maximum duration of 195 days, irrespective of any modification/ amendment to the RFP and/or RFP Documents. In the event that the Bid process has not been completed in such time limit, the Authorized Representative shall obtain approval from the Appropriate Commission for extension or the cancellation of the same.

**3.9 Validity of the Bid**

3.9.1 The Bidder shall submit the Bid which shall remain valid up to one hundred and twenty (120) days after the Bid Deadline (“**Bid Validity**”). The Authorized Representative reserve the right to reject any Bid which does not meet the aforementioned validity requirement.

3.9.2 The Authorized Representative may solicit the Bidders’ consent for an extension of the period of validity of the Bid. The request and the response in this regard shall be in writing. In the event any Bidder refuses to extend its Bid validity as requested by the Authorized Representative, the Authorized Representative shall not be entitled to invoke the Bid Bond. A Bidder accepting the Authorized Representative request for validity extension shall not be permitted to modify its Bid and such Bidder shall, accordingly, extend the validity of the Bid Bond as requested by the Authorized Representative and further undertake not to participate in any bid process as per Clause 2.1.2.4 within seven (7) days of such request, failing which the Bid shall not be considered as valid.

**3.10 Method of Submission**

3.10.1 Bids are to be submitted in a single closed cover envelope (as mentioned in Clause 2.10.2) containing Envelope I (Non-Financial Bid) and Envelope II (Financial Bid) each one duly closed separately. Envelope I (Non-Financial Bid) and Envelope II (Financial Bid) should be transcript in the following way;

**Envelope I (Non-Financial Bid)  
Superscript -**

“Bid for selection of Seller(s) for procurement of power on long term basis under Case – 1 bidding procedure

Name of the Bidder -.....

Due for opening on .....

Envelope I: Non Financial Bid”

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**Envelope II (Financial Bid)  
Superscript -**

“Bid for selection of Seller(s) for procurement of power on long term basis under Case – 1 bidding procedure

Name of the Bidder .....

Due for opening on: .....

Envelope II: Financial Bid ”

3.10.2 Envelope I (Non-Financial Bid) and Envelope II (Financial Bid) (mentioned in Clause 2.10.1) for the Bid to be submitted by Bidders should be packed in a single closed cover envelope, with the following superscript:

“Bid for selection of Seller(s) for procurement of power on Long term basis under Case – 1 bidding procedure”

Due for opening on 30.07.09

**B. K. Makhija**  
**Chief Engineer (RPPC)**  
**Rajasthan Rajya Vidyut Prasaran Nigam Limited**  
**Vidyut Bhawan, Janpath, Jyoti Nagar**  
**Jaipur-302005 (Rajasthan)**

“Name of the Bidder .....”  
*[Insert name of Bidder]*

3.10.3 The Bidders have the option of sending their Bid either by registered post; or speed post; or courier; or by hand delivery, so as to reach the Authorized Representative by the Bid Deadline. Bids submitted by telex / telegram / fax / e-mail shall not be considered under any circumstances. The Authorized Representative shall not be responsible for any delay in receipt of the Bid. Any Bid received after the Bid Deadline shall be returned unopened.

3.10.4 It may be noted that Non-Financial Bid (Envelope I) shall not contain any information/document relating to Financial Bid. If Non-Financial Bid contains any such information / documents, the Authorized Representative shall not be responsible for premature opening of the Financial Bid.

3.10.5 All pages of the Bid, except for the Bid Bond (format 4.9), and any other document executed on non-judicial stamp paper, forming part of the Bid and corrections in the Bid, if any, must be signed by the authorized signatory on behalf of the Bidder. It is clarified that the same authorized signatory shall sign all pages of the Bid. However, any published document submitted with the Bid shall be signed by the authorized signatory at least on the first and last page of such document.

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- 3.10.6 Bidders shall submit the Bid one (1) original plus two (2) copies, duly signed by the authorized signatory of the Bidder. The original Bid shall be clearly marked "ORIGINAL", and all other copies are to be clearly marked "COPY OF BID". In the event of any discrepancy between the original and the accompanying copies, only the original shall prevail.
- 3.10.7 No change or supplemental information to a Bid will be accepted after the Bid Deadline, unless the same is requested for by the Authorized Representative as per Clause 2.5 xiii(g).

Provided that a Bidder shall always have the right to withdraw or modify its Bid before the Bid Deadline. In cases where the Bid is withdrawn by the Bidder before the Bid Deadline, then such Bid shall be returned unopened.

- 3.10.8 If the outer cover envelope or Envelope I (Non-Financial Bid) or Envelope II (Financial Bid) is not closed and not transcribed as per the specified requirement, the Authorized Representative will assume no responsibility for the Bid's misplacement or premature opening.

### 3.11 Preparation Cost

- 3.11.1 The Bidder shall be responsible for all the costs associated with the preparation of the Bid and participation in discussions and attending Pre-bid meetings, and finalization and execution of the RFP Documents, etc., Authorized Representative shall not be responsible in any way for such costs, regardless of the conduct or outcome of this Bid process.
- 3.11.2 All those interested in purchasing the RFP may write to the Authorized Representative with a non-refundable fee of **Rs. 5,00,000/- (Rupees Five Lac only) or 11,500 US Dollars (US Dollars Eleven Thousand Five Hundred Only)**, in the form of a demand draft / banker's cheque / pay order drawn in favor of **Sr. A. O. (EA & Cash), Rajasthan Rajya Vidyut Prasaran Nigam Limited**, payable at Jaipur, latest by **30.03.09**. The RFP shall be issued to a Bidder on any working day from **25.02.09 to 30.03.09** between 10:00 hours (IST) to 17:00 hours (IST) by the RRVPNL, on written request and against payment of the above mentioned fee. In case where a Bidder requests the RFP and RFP Documents to be sent by post, the Authorized Representative shall promptly dispatch the RFP and RFP Documents to such Bidder by registered mail/ air mail only upon receipt of written request and payment of the above mentioned fee from such Bidder. The Authorized Representative shall, under no circumstances, be held responsible for late delivery or loss of documents so mailed. The RFP and RFP Documents can also be downloaded from [www.rajenergy.com](http://www.rajenergy.com) & [www.rvnpn.co.in](http://www.rvnpn.co.in). However, in such case the Bidder can submit the Bid only on submission of a non refundable fee of **Rs. 5,00,000/- (Rupees Five Lac only) or 11,500 US Dollars (US Dollars Eleven Thousand Five Hundred Only)** as mentioned above separately along with the Bid.

### 3.12 Bid Bond

- 3.12.1 Each Bidder shall submit the Bid accompanied by Bid Bond, as per Format 4.9 issued by any of the Banks listed in Format 5.8. In the case of a Consortium, the Lead Member

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shall furnish the Bid Bond as stipulated in the RFP, on behalf of the Consortium Members as per the Consortium Agreement. The Bid Bond shall be valid for a period of thirty (30) days beyond the validity of the Bid.

3.12.2 The Bid Bond, may be invoked by the Authorized Representative or its authorized representative, without any notice, demure, or any other legal process upon occurrence of any of the following:

- In case the Successful Bidder is a Bidding Company choosing to incorporate a Project Company and in case of a Bidding Consortium: “Failure to incorporate the Project Company as a legal entity within fifteen(15) days of issue of Letter of Intent, or
- Failure to furnish the Contract Performance Guarantee as per Clause 2.13; or
- Failure to execute the RFP Documents subject to the provisions of Clause 2.2.11; or
- Bidder submitting any wrong information or making any misrepresentation in Bid as mentioned in Clause 2.5.

3.12.3 The Bid Bonds of all Bidders, whose Bids are declared non-responsive, shall be returned and released by the Authorized Representative within thirty (30) days after the date on which the Financial Bids are opened.

3.12.4 The Bid Bonds of all unsuccessful Bidders shall be returned and released by the Authorized Representative within a period of thirty (30) days of the occurrence of the earlier of the following:

- c) submission of the Contract Performance Guarantee as per Clause 2.13 of the RFP and the execution of the RFP Documents (as applicable) by the Successful Bidder(s); or
- d) Expiry of the Bid Validity/extended validity of Bid of unsuccessful Bidders; or

3.12.5 The Bid Bonds of all Bidders shall be returned and released by the Authorized Representative within a period of thirty (30) days of the occurrence of the termination/cancellation of Bid process by the Authorised Representative.

3.12.6 The Bid Bond of the Successful Bidder(s) shall be returned on the submission of Contract Performance Guarantee as per Clause 2.13 of the RFP and the provisions of the PPA.

### **3.13 Contract Performance Guarantee (CPG)**

3.13.1 Within thirty (30) days of issue of Letter of Intent, the Successful Bidder(s) either on his/their own behalf or on behalf of the Seller, shall provide separately to each of the Procurers, the Contract Performance Guarantee calculated on the basis of Rs. 30 lakhs/MW of the total Contracted Capacity of the Successful Bidder and as prescribed in Format 5.7. The CPG provided to the Procurers shall be allocated in proportion to their respective Contracted Capacity. In case of the Successful Bidder being a Bidding Consortium, the Lead Member shall be responsible for ensuring the submission of the CPG on behalf of all the Consortium Members. The Contract Performance Guarantee

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shall be initially valid for a period of three (3) months after the Scheduled Delivery Date and thereafter shall be dealt with in accordance with the provisions of the PPA. The Contract Performance Guarantee shall be issued by any of the banks listed in Format 5.8.

- 3.13.2 In case the Successful Bidder is unable to obtain the Contract Performance Guarantee for the total amount from any one bank specified in Format 5.8, the Successful Bidder may obtain the same from not more than three (3) banks specified in Format 5.8.
- 3.13.3 Non submission of the CPG by the Successful Bidder(s) as per the provisions of Clause 2.13 may lead to the invocation of the Bid Bond, cancellation of the Letter of Intent of such Successful Bidder(s) by the Procurer/ Authorized Representative, and thereafter, the provisions of Clause 2.5 xiii(b) shall be applicable.
- 3.13.4 On successful supply of power by the Seller as per the terms of the PPA for a period of five (5) years from the date of commencement of power supply, then subject to the terms and conditions of the PPA, the existing Contract Performance Guarantee shall be reduced by an amount (in Rupees) calculated on the basis of Rs. 15 lakhs per MW of the then existing total Contracted Capacity of the Seller.
- 3.13.5 The Seller shall thereafter provide such reduced Contract Performance Guarantee to the Procurer(s), to replace the existing Contract Performance Guarantee, of an amount calculated on the basis of Rs. 15 lakhs per MW of the then existing total Contracted Capacity of the Seller and allocated in the ratio of then respective Contracted Capacity of the Procurer. Thereafter, the reduced CPG shall be deemed to be the CPG for the remaining term of the PPA.

### **3.14 Opening of Bids**

- 3.14.1 Envelope I (Non-Financial Bid) and Envelope II (Financial Bid) shall be opened as per the following time schedule and at the venue where the Bids are required to be submitted, as specified in Clause 2.8, in the presence of one representative from each of such Bidders who wish to be present:

Opening of Envelope I (Non-Financial Bid): 15:30 hours (IST) on 01.06.09

Opening of Envelope II (Financial Bid): 15:00 hours (IST) on 30.07.09

or such other dates as may be intimated by the Authorized Representative to the Bidders.

In the event of any of above dates falling on a day which is not a working day or which is a public holiday, the Bid shall be opened on the next working day at the same venue and time.

- 3.14.2 The following information from each Bid shall be read out to all the Bidders at the time of opening of Envelope I (Non-Financial Bid) and Envelope II(Financial Bid):

- Name of the Bidder including Members of the Bidding Consortium, if applicable
- Details of the Bid Bond (applicable only for Envelope I)
- Quantum of power offered and its source (applicable only for Envelope II)
- Details of Injection Point

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- Quoted Tariff (applicable only for Envelope II)

### **3.15 Right to withdraw the RFP and to reject any Bid**

3.15.1 This RFP may be withdrawn or cancelled by the Authorized Representative at any time without assigning any reasons thereof. The Authorized Representative further reserves the right, at its complete discretion, to reject any or all of the Bids without assigning any reasons whatsoever and without incurring any liability on any account.

### **3.16 Enquiries**

3.16.1 Written clarifications on the RFP and RFP Documents as per Clause 2.2.6 may be sought from:

Name: Mr. B. K. Makhija  
Designation: Chief Engineer (RPPC)  
Address: Rajasthan Rajya Vidyut Prasaran Nigam Limited  
Vidyut Bhawan, Janpath, Jyoti Nagar  
Jaipur-302005 (Rajasthan)  
Telefax: +91-141-2740275  
Email: ppmrvpn@sancharnet.in

3.17 The Authorized Representative reserve the right to interpret the Bid submitted by the Bidder in accordance with the provisions of this RFP and make its own judgment regarding the interpretation of the same. In this regard the Authorized Representative shall have no liability towards any Bidder and no Bidder shall have any recourse to the Authorized Representative with respect to the selection process. The Authorized Representative shall evaluate the Bids using the evaluation process specified in Section 3, at its sole discretion. The Authorized Representative's decision in this regard shall be final and binding on the Bidders.

### **3.18 Confidentiality**

3.18.1 The parties undertake to hold in confidence this RFP and RFP Documents and not to disclose the terms and conditions of the transaction contemplated hereby to third parties, except:

- d) to their professional advisors;
- e) to their officers, contractors, employees, agents or representatives, financiers, who need to have access to such information for the proper performance of their activities;
- f) disclosures required under applicable Law,

without the prior written consent of the other parties of the concerned agreements.

Provided that the Successful Bidder(s) agrees and acknowledges that any of the Procurers may at any time, disclose the terms and conditions of the RFP and RFP Documents to any person, to the extent stipulated under the applicable Law or the Bidding Guidelines.

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### 3.19 Fraudulent and Corrupt Practices

3.19.1 The Bidders and their respective officers, employees, agents and advisers shall observe the highest standard of ethics during the Bid process and subsequent to the issue of the LOI. Notwithstanding anything to the contrary contained herein, or in the LOI, the Authorized Representative shall reject a Bid, withdraw the LOI, as the case may be, without being liable in any manner whatsoever to the Bidder, if it determines that the Bidder has, directly or indirectly or through an agent, engaged in corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice in the Bid process. In such an event, the Authorized Representative shall forfeit the Bid Bond, without prejudice to any other right or remedy that may be available to the Authorized Representative hereunder or otherwise.

3.19.2 Without prejudice to the rights of the Authorized Representative under Clause 2.19 hereinabove and the rights and remedies which the Authorized Representative may have under the LOI, if a Bidder is found by the Authorized Representative to have directly or indirectly or through an agent, engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice during the Bid process, or after the issue of the LOI, such Bidder shall not be eligible to participate in any tender or RFP issued by the Authorized Representative, during a period of two (2) years from the date such Bidder is found by the Authorized Representative to have directly or indirectly or through an agent, engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practices, as the case may be.

3.19.3 For the purposes of this Clause 2.19, the following terms shall have the meaning hereinafter respectively assigned to them:

(a) **“corrupt practice”** means (i) the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence the actions of any person connected with the Bid process (for avoidance of doubt, offering of employment to or employing or engaging in any manner whatsoever, directly or indirectly, any official of the Authorized Representative who is or has been associated or dealt in any manner, directly or indirectly with the Bid process or the LOI or has dealt with matters concerning the PPA or arising there from, before or after the execution thereof, at any time prior to the expiry of one year from the date such official resigns or retires from or otherwise ceases to be in the service of the Authorized Representative, shall be deemed to constitute influencing the actions of a person connected with the Bid Process); or (ii) engaging in any manner whatsoever, whether during the Bid Process or after the issue of the LOI or after the execution of the PPA, as the case may be, any person in respect of any matter relating to the project or the LOI or the PPA, who at any time has been or is a legal, financial or technical adviser of the Procurer / Authorized Representative in relation to any matter concerning the Project;

(b) **“fraudulent practice”** means a misrepresentation or omission of facts or suppression of facts or disclosure of incomplete facts, in order to influence the Bid process;

(c) **“coercive practice”** means impairing or harming, or threatening to impair or harm, directly or indirectly, any person or property to influence any person’s participation or



action in the Bid process;

(d) “**undesirable practice**” means (i) establishing contact with any person connected with or employed or engaged by the Procurer/Authorized Representative with the objective of canvassing, lobbying or in any manner influencing or attempting to influence the Bid process; or (ii) having a Conflict of Interest; and

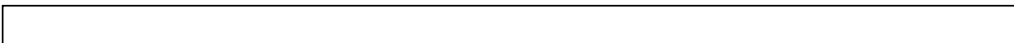
(e) “**restrictive practice**” means forming a cartel or arriving at any understanding or arrangement among Bidders with the objective of restricting or manipulating a full and fair competition in the Bid process;





## SECTION - 3

# EVALUATION CRITERIA



## SECTION 3

### 4 EVALUATION CRITERIA

#### 4.1 Bid Evaluation

The evaluation process comprises the following four steps:

- Step I – Responsiveness check of Non Financial Bid
- Step II – Evaluation of Bidder’s fulfillment of Qualification Requirements as per Clause 2.1
- Step III - Evaluation of Financial Bid
- Step IV – Successful Bidder(s) selection

#### 4.2 STEP I – Responsiveness check of Non Financial Bid

The Non Financial Bid submitted by Bidders shall be scrutinized to establish responsiveness to the requirements laid down in the RFP. Subject to Clause 2.5 xiii(g), any of the following may cause the Bid to be considered “Non-responsive”, at the sole discretion of Authorized Representative:

- Bids that are incomplete, i.e. not accompanied by any of the applicable formats inter alia covering letter, power of attorney supported by a board resolution as per Clause 2.4.1.1, applicable board resolutions, applicable undertakings, format for disclosure, valid Bid Bond, Consortium Agreement;
- Bid not signed by authorized signatory and / or stamped in the manner indicated in this RFP;
- Material inconsistencies in the information / documents submitted by the Bidder, affecting the Qualification Requirements;
- Information not submitted in the formats specified in this RFP;
- A Bidder submitting more than one Bid or participating in more than one Bid as a Member of Bidding Consortium;
- Bid validity being less than that required as per Clause 2.9 of this RFP;
- Bid being conditional in nature;
- Bid not received by the Bid Deadline;
- Bid having Conflict of Interest;
- More than one Member of the Bidding Consortium or a Bidding Company using the credentials of the same Parent Company / Affiliate;
- Bidder delaying in submission of additional information or clarifications sought by Procurer/ Authorized Representative as applicable;
- Bidder makes any misrepresentation as specified in Clause 2.5.

Each Bid shall be checked for compliance with the submission requirements set forth in this RFP before the evaluation of Bidder’s fulfillment of Qualification Requirement is taken up. Format 4.11 shall be used to check whether each Bidder meets the stipulated requirements.

#### 4.3 STEP II– Evaluation of Bidder’s fulfillment of Qualification Requirements

- 3.3.2 Evaluation of Bidder’s Qualification will be carried out based on the information furnished by the Bidder as per the prescribed Format 4.6 and related documentary

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evidence in support of meeting the Qualification Requirements as specified in Clause 2.1. Non-availability of information and related documentary evidence for the satisfaction of Qualification Requirements may cause the Bid to be non-responsive.

#### 4.4 Step III - Evaluation of Financial Bid

3.4.10 Financial Bids (Envelope II) of the Qualified Bidders shall be opened in presence of the representatives of such Qualified Bidders, who wish to be present, as per the timelines indicated in Clause 2.14, or such other date as may be intimated by Authorized Representative to the Bidders. The evaluation of Financial Bid shall be carried out based on the information furnished in Envelope II (Financial Bid).

Provided however, in case Envelope II of only one Qualified Bidder OR two Qualified Bidders having any affiliate company or companies of the Procurer(s) remain(s) after the responsiveness check (Step I), the Envelope II of such Bidder(s) shall not be opened and the matter shall be referred to Appropriate Commission and the selection of the Successful Bidder shall then be at the sole discretion of the Appropriate Commission.

3.4.11 The Financial Bids submitted by the Bidders shall be scrutinized to ensure conformity with the provisions of Clause 2.4.1.1 (B) of this RFP. Any Bid not meeting any of the requirements as per Clause 2.4.1.1 (B) of this RFP may cause the Bid to be considered “Non-responsive” at the sole decision of the Authorized Representative. Financial Bid not in conformity with the requirement of Sl. No. (iv) and (x) of Clause 2.4.1.1 (B) of this RFP shall be rejected.

3.4.12 The Bidders shall quote the different components of Tariff as specified in Format 4.10. Based on the Quoted Tariff provided by the Bidders, the Levelized Tariff shall be calculated for the term of the PPA as per the methodology mentioned below.

3.4.13 For the purpose of comparison of Financial Bids, the escalable components of Quoted Tariff of each Bidder shall be uniformly escalated as per the relevant inflation / escalation rates mentioned below. For the actual Tariff payment, such factors shall be applied as per the provisions of the PPA.

Head	Value
<b>General</b>	
20. Annual escalation rate applicable to Quoted Escalable Capacity Charge	This shall be the rate notified by CERC applicable on the day which is seven (7) days prior to Bid Deadline
21. Discount Rate for computation of Levelized Tariff	This shall be the rate notified by CERC applicable on the day which is seven (7) days prior to Bid Deadline
22. Annual escalation rate applicable to normative Transmission Charges	This shall be the rate notified by CERC applicable on the day which is seven (7) days prior to Bid Deadline
<b>Captive Coal Block/ Linkage Based Coal</b>	
23. Annual escalation rate applicable to Quoted Escalable Energy Charges (for captive coal block)	This shall be the rate notified by CERC applicable on the day which is seven (7) days prior to Bid Deadline

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24. Annual escalation rate applicable to Quoted Escalable Energy Charges (for linkage based coal)	This shall be the rate notified by CERC applicable on the day which is seven (7) days prior to Bid Deadline
25. Annual escalation rate applicable to Quoted Escalable Inland Transportation Charges	This shall be the rate notified by CERC applicable on the day which is seven (7) days prior to Bid Deadline
<b>Imported Coal</b>	
26. Annual escalation rate applicable to Quoted Escalable Energy Charges	This shall be the rate notified by CERC applicable on the day which is seven (7) days prior to Bid Deadline
27. Annual escalation rate applicable to Quoted Escalable Overseas Transportation Charges	This shall be the rate notified by CERC applicable on the day which is seven (7) days prior to Bid Deadline
28. Annual escalation rate applicable to Quoted Escalable Inland Transportation Charges	This shall be the rate notified by CERC applicable on the day which is seven (7) days prior to Bid Deadline
29. Annual escalation rate applicable to Quoted Escalable Fuel Handling Charges	This shall be the rate notified by CERC applicable on the day which is seven (7) days prior to Bid Deadline
30. Base Exchange Rate for Quoted Escalable and Non-Escalable Energy Charge and Escalable and Non-Escalable Overseas Transportation Charge (Rs. / US\$)	This shall be the simple average of fifteen (15) SBI TT buying rate for last fifteen (15) days (for fifteen (15) such days for which exchange rates are published by SBI), seven (7) days before Bid Deadline (excluding Bid Deadline) for which such exchange rates are published by SBI.
31. Rupee appreciation/depreciation rate with respect to US\$ applied to Quoted Non Escalable and Escalable Energy Charges and Escalable and Non-Escalable Oversea Transportation Charge (Rs. / US\$)	This shall be the rate notified by CERC applicable on the day which is seven (7) days prior to Bid Deadline
<b>Imported gas (R-LNG)</b>	
32. Annual escalation rate applicable to Quoted Escalable Energy Charges	This shall be the rate notified by CERC applicable on the day which is seven (7) days prior to Bid Deadline
33. Annual escalation rate applicable to Quoted Escalable Overseas Transportation Charges	This shall be the rate notified by CERC applicable on the day which is seven (7) days prior to Bid Deadline
34. Annual escalation rate applicable to Quoted	This shall be the rate notified by CERC applicable on the day which is seven (7) days

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Escalable Inland Transportation Charges	prior to Bid Deadline
35. Annual escalation rate applicable to Quoted Escalable Fuel Handling Charges	This shall be the rate notified by CERC applicable on the day which is seven (7) days prior to Bid Deadline
36. Rupee appreciation/depreciation rate with respect to US\$ applied to Quoted Escalable and Non Escalable Energy Charges and Escalable and Non-Escalable Oversea Transportation Charge (Rs. / US\$)	This shall be the rate notified by CERC applicable on the day which is seven (7) days prior to Bid Deadline
<b>Domestic (Pipeline) Gas</b>	
37. Annual escalation rate applicable to Quoted Escalable Energy Charges	This shall be the rate notified by CERC applicable on the day which is seven (7) days prior to Bid Deadline
38. Annual escalation rate applicable to Quoted Escalable Inland Transportation Charges	This shall be the rate notified by CERC applicable on the day which is seven (7) days prior to Bid Deadline

The factor at Sl. No. 1 in the above table shall be applied from the Scheduled Delivery Date and the factors at Sl. No. 3, 4, 5, 6, 7, 8, 9, 10, 12, 13, 14, 15, 16, 17, 18 and 19 shall be applied from the Bid Deadline (as applicable). Further all the factors mentioned in Sl No. 1, 4, 5, 6 15 and 16 shall be applied as at the mid point of each Contract Year.

3.4.14 Applicable transmission charges shall be added to such escalated Quoted Tariff as described below.

**3.4.15 Transmission Charges**

The Injection Point specified by the Bidder in its Financial Bid shall be used to add the applicable transmission charges.

- d) In case of Injection Point being a CTU Interface, applicable transmission charges as specified in Format 5.10 from such CTU Interface up to the Delivery Point with appropriate escalation shall be added to the escalated Quoted Tariff.
- e) Transmission Charges, if any, for transmitting power from the Interconnection Point to the Injection Point shall be borne by the Seller and no transmission charges for such intrastate transmission link shall neither be added for evaluation nor shall be payable by the Procurer(s) during the term of the PPA.
- f) In case of Injection Point being a Delivery Point, no transmission charges shall be added.

**3.4.16 Transmission Loss**

The escalated Quoted Tariffs (Rs./kWh) of each of the Bidders for **each year** of the term of the PPA, calculated as per provisions of Clause 3.4.4 and after adding

applicable escalated transmission charges, shall then be adjusted for the applicable transmission losses in the following manner:

Adjusted escalated Quoted Tariff (in Rs/ kWh) = escalated Quoted Tariff (in Rs/ kWh as calculated in Clause 3.4.4 and after adding applicable escalated transmission charges) \* Aggregate Adjustment Factor (AAF):

where,  
Aggregate Adjustment Factor (AAF) = (AF)1 \* (AF)2 \* ..... \* (AF)n and

Adjustment Factor (AF) = 1/ (1-applicable transmission loss (in %/100))

The applicable transmission loss (in %) shall comprise of

- c) the transmission loss (in %) for the intrastate transmission link connecting the Interconnection Point to the Injection Point, if applicable and specified by the Bidder in Format 4.10; and
- d) the applicable normative transmission loss (in %) from the Injection Point to the Delivery Point for the regions involved and as provided in Format 5.11 of this RFP

### **3.4.17 Computing Levelized Tariff**

The adjusted escalated Quoted Tariffs (Rs./kWh) as calculated in Clause 3.4.7 above for each Bidder for the term of PPA, shall then be discounted upto the Scheduled Delivery Date mentioned in Clause 1.3.1, by applying the discount factors (based on the Discount Rate as mentioned in Clause 3.4.4 above) and such aggregate discounted value for the term of the PPA shall be divided by the sum of such discount factors so as to calculate the Levelized Tariff of each Bidder.

The Levelized Tariff shall be calculated by assuming uniformly for all Bidders that power shall get delivered on the Scheduled Delivery Date.

3.4.18 For the ease of submission and clarity of Bidders, the methodology of computation of Levelized Tariff is presented in the Format 5.9 of this RFP. Bidders are required to go through this illustration carefully and seek clarifications if required.

### **4.5 STEP IV – Successful Bidder(s) Selection**

3.5.13 Bids qualifying in Step III shall only be evaluated in this stage.

3.5.14 The Levelized Tariff calculated as per Clause 3.4.17 for all Financial Bids of Qualified Bidders shall be ranked from the lowest to the highest.

3.5.15 The Bidder with the lowest Levelized Tariff shall be declared as the Successful Bidder for the quantum of power (in MW) offered by such Bidder in its Financial Bid.

3.5.16 The selection process of the Successful Bidder as mentioned above in Clause 3.5.3 shall be repeated for all the remaining Financial Bids of Qualified Bidders until the



entire Requisitioned Capacity is met or until the time when the balance of the Requisitioned Capacity is less than the Minimum Bid Capacity.

3.5.17 At any step in the process in Clause 3.5.4, in case the Requisitioned Capacity has not been achieved and the offered capacity of the Bidder with the lowest Levelized Tariff amongst the remaining Financial Bids is larger than the balance Requisitioned Capacity, any fraction or combination of fractions offered by such Bidder shall be considered for selection, towards meeting the Requisitioned Capacity.

3.5.18 The selection process shall stand completed once the Requisitioned Capacity has been achieved through the summation of the quantum offered by the Successful Bidders or when the balance of the Requisitioned Capacity is less than the Minimum Bid Capacity.

Provided however in case only one Bidder remains at any step of the selection process and the balance Requisitioned Capacity exceeds the Minimum Bid Capacity, Financial Bid(s) of such Bidder shall be referred to Appropriate Commission and the selection of the Bidder shall then be at the sole discretion of the Appropriate Commission.

3.5.19 At any step during the selection of Successful Bidder(s) in accordance with Clauses 3.5.2 to 3.5.6, the Authorized Representative reserves the right to increase / decrease the Requisitioned Capacity by up to twenty percent (20%) of the quantum indicated in Clause 1.3.1 to achieve the balance Requisitioned Capacity and select the Successful Bidder with the lowest Levelized Tariff amongst the remaining Bids. Any increase / decrease in the Requisitioned Capacity exceeding twenty percent (20%) of the quantum in Clause 1.3.1, can be made only with the approval of the Appropriate Commission.

3.5.20 The Letter(s) of Intent shall be issued to all such Successful Bidder(s) selected as per the provisions of this Clause 3.5.

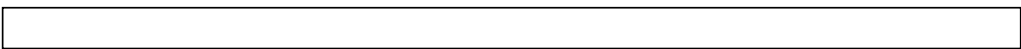
3.5.21 There shall be no negotiation on the Quoted Tariff between the Authorized Representative and the Bidder(s) during the process of evaluation.

3.5.22 Each Successful Bidder shall unconditionally accept the LOI, and record on one (1) copy of the LOI, "Accepted Unconditionally", under the signature of the authorized signatory of the Successful Bidder and return such copy to the Authorized Representative within seven (7) days of issue of LOI.

3.5.23 If the Successful Bidder, to whom the Letter of Intent has been issued does not fulfill any of the conditions specified in Clauses 2.2.8 and 2.2.9, the Authorized Representative reserves the right to annul the award of the Letter of Intent of such Successful Bidder. Further, in such a case, the provisions of Clause 2.5 xiii(b) shall apply.

3.5.24 The Authorized Representative, in its own discretion, has the right to reject all Bids if the Quoted Tariff are not aligned to the prevailing market prices.

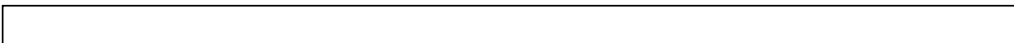






# SECTION - 4

## FORMATS FOR BID SUBMISSION



## SECTION – 4

### 9. FORMATS FOR BID SUBMISSION

The following formats are required to be submitted as part of the Bid. These formats are designed to demonstrate the Bidder's compliance with the Qualification Requirements set forth in Clause 2.1 of Section 2 and other Bid submission requirements specified in the RFP.

- xv. Format of Covering Letter (Envelope I) – 4.1
- xvi. Formats for Power of Attorney (Envelope I) – 4.2
- xvii. Format for the Consortium Agreement (Envelope I) – 4.3
- xviii. Format for Letter of Consent from Consortium Members (Envelope I) – 4.4
- xix. Format for Bidder's composition and ownership structure (Envelope I) – 4.5
- xx. Format for Qualification Requirement (Envelope I) – 4.6
- xxi. Format of Undertakings (Envelope I) – 4.7
- xxii. Format for Board Resolutions (Envelope I) – 4.8
- xxiii. Format for Bid Bond (Envelope I) – 4.9
- xxiv. Format for Financial Bid (Envelope II) – 4.10
- xxv. Format of checklist for Bid submission requirements (Envelope I) - 4.11
- xxvi. Format for Disclosure (Envelope I) -4.12
- xxvii. Details of source of power and primary fuel(Envelope I) – 4.13
- xxviii. Format for certificate of relationship of Parent Company or Affiliate with the Bidding Company or with the Member of the Bidding Consortium, including the Lead Member (Envelope I) – 4.14

A Bidder may use additional sheets to submit the information for its detailed response.

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#### 4.15 Format of Covering Letter

(The covering letter should be on the Letter Head of the Bidding Company/ Lead Member of the Bidding Consortium)

Date: \_\_\_\_\_

From : \_\_\_\_\_(Insert name and address of Bidding Company/ Lead Member of the Bidding Consortium)

\_\_\_\_\_

Tel.#: \_\_\_\_\_

Fax#: \_\_\_\_\_

E-mail address# \_\_\_\_\_

To

**Chief Engineer (RPPC)**

**Rajasthan Rajya Vidyut Prasaran Nigam Limited**

**Vidyut Bhawan, Janpath, Jyoti Nagar**

**Jaipur-302005 (Rajasthan)**

Sub: **Bid for supply of power on *long* term basis through tariff based competitive bidding process under Case-1 bidding procedure in response to RFP dated 25.02.09.**

Dear Sir,

We, the undersigned ..... [*insert name of the 'Bidder'*] having read, examined and understood in detail the RFP and RFP Documents for supply of power on long term basis through tariff based competitive bidding process for meeting the requirements of the Procurer(s) hereby submit our Bid comprising of Financial Bid and Non-Financial Bid. We confirm that neither we nor any of our Parent Company/ Affiliate/ Ultimate Parent Company has submitted Bid other than this Bid directly or indirectly in response to the aforesaid RFP.

**13.** We give our unconditional acceptance to the RFP, dated 25.02.09 and RFP Documents attached thereto, issued by the Procurer/ Authorized Representative, as amended. In token of our acceptance to the RFP Documents, the same have been initialed by us and enclosed to the Bid. We shall ensure that the Seller shall execute such RFP Documents as per the provisions of the RFP and provisions of such RFP Documents shall be binding on us.

#### **14. Bid Bond**

We have enclosed a Bid Bond of Rs. .... (Insert Amount), in the form of bank guarantee no.....(Insert number of the bank guarantee) dated ..... [Insert date of bank guarantee] as per Format 4.9 from ..... (Insert name of bank providing Bid Bond) and valid up to.....in terms of Clause 2.12 of this RFP. The offered quantum of power by us is ..... MW (Insert total capacity offered)

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15. We have submitted our Financial Bid strictly as per Format 4.10 of this RFP, without any deviations, conditions and without mentioning any assumptions or notes for the Financial Bid in the said format.

**16. Acceptance**

We hereby unconditionally and irrevocably agree and accept that the decision made by the Procurer/ Authorized Representative in respect of any matter regarding or arising out of the RFP shall be binding on us. We hereby expressly waive any and all claims in respect of Bid process.

We confirm that there are no litigations or disputes against us, which materially affect our ability to fulfill our obligations with regard to supply of power.

**17. Familiarity with Relevant Indian Laws & Regulations**

We confirm that we have studied the provisions of the relevant Indian laws and regulations as required to enable us to submit this Bid and execute the RFP Documents, in the event of our selection as Successful Bidder. We further undertake and agree that all such factors as mentioned in Clause 2.6 of RFP have been fully examined and considered while submitting the Bid.

**18. Contact Person**

Details of the contact person are furnished as under:

Name : .....  
Designation : .....  
Company : .....  
Address : .....  
Phone Nos. : .....  
Fax Nos. : .....  
E-mail address: .....

19. We are enclosing herewith the Non Financial Bid (Envelope I) and Financial Bid (Envelope II) containing duly signed formats, each one duly closed separately, in one (1) original + two (2) copies (duly attested) as desired by you in the RFP for your consideration.

20. It is confirmed that our Bid is consistent with all the requirements of submission as stated in the RFP and subsequent communications from the Authorized Representative.

21. The information submitted in our Bid is complete, strictly as per the requirements stipulated in the RFP and is correct to the best of our knowledge and understanding. We would be solely responsible for any errors or omissions in our Bid.

22. We confirm that all the terms and conditions of our Bid are valid for acceptance for a period of one hundred and twenty (120) days from the Bid Deadline.

23. We confirm that we have not taken any deviation so as to be deemed non-responsive with respect to the provisions stipulated in Clause 2.4.1, of this RFP.

24. We confirm that no order / ruling has been passed by an Appropriate Commission or a competent court against us or any of our Affiliates in the preceding five (5) years from the Bid Deadline for breach of any contract for supply of power having duration of contract in excess of one (1) year and that the bid security submitted by the us or any of our Affiliates has not been forfeited, either partly or wholly, in any bid process under Case-1 or case -2 bidding procedure for procurement of power, in the preceding five (5) years from the Bid Deadline to any licensee in India as per the provisions of Clause 2.1.8.

Dated the \_\_\_\_\_ day of \_\_\_\_\_, 20...

Thanking you,  
We remain,

Yours faithfully,

**Name, Designation and Signature of Authorized Person in whose name Power of Attorney / Board Resolution as per Clause 2.4.1.1 is issued**

--

**4.16 Formats for Power of Attorney**

**POWER OF ATTORNEY**

**(To be on non-judicial stamp paper of appropriate value as per Stamp Act relevant to place of execution. Foreign companies submitting Bids are required to follow the applicable law in their country)**

**c) Power of Attorney to be provided by the Bidding Company/ Lead Member in favor of its representative as evidence of authorized signatory’s authority.**

Know all men by these presents, We .....(name and address of the registered office of the Bidding Company or Lead Member of the Bidding Consortium, as applicable) do hereby constitute, appoint and authorize Mr./Ms.....(name and residential address) who is presently employed with us and holding the position of ..... as our true and lawful attorney, to do in our name and on our behalf, all such acts, deeds and things necessary in connection with or incidental to submission of our Bid for supply of power on long term basis through tariff based competitive bidding process for meeting the requirements of **Jaipur Vidyut Vitran Nigam Limited (JVVNL), Ajmer Vidyut Vitran Nigam Limited (AVVNL) and Jodhpur Vidyut Vitran Nigam Limited (JdVVNL)** in the country of India in response to the RFP dated 25.02.09 issued by **Rajasthan Rajya Vidyut Prasaran Nigam Limited** “Authorized Representative”, including signing and submission of the Bid and all other documents related to the Bid, including but not limited to undertakings, letters, certificates, acceptances, clarifications, guarantees or any other document which the Authorized Representative may require us to submit. The aforesaid Attorney is further authorized for making representations to the Authorized Representative, and providing information / responses to the Authorized Representative, representing us in all matters before the Authorized Representative, and generally dealing with the Authorized Representative in all matters in connection with our Bid till the completion of the bidding process as per the terms of the RFP.

We hereby agree to ratify all acts, deeds and things done by our said attorney pursuant to this Power of Attorney and that all acts, deeds and things done by our aforesaid attorney shall be binding on us and shall always be deemed to have been done by us.

All the terms used herein but not defined shall have the meaning ascribed to such terms under the RFP.

**Signed by the within named**  
.....[Insert the name of the executant company]

**through the hand of**  
Mr. ....

**duly authorized by the Board to issue such Power of Attorney**

**Dated this ..... day of .....**

**Accepted**

\_\_\_\_\_

.....  
Signature of Attorney  
(Name, designation and address of the Attorney)

**Attested**

.....  
(Signature of the executant)  
(Name, designation and address of the executant)

.....  
**Signature and stamp of Notary of the place of execution**

**Common seal of ..... has been affixed in my/our presence pursuant to Board of Director's Resolution dated.....**

**WITNESS**

1. ....  
(Signature)  
  
Name .....  
  
Designation.....

2. ....  
(Signature)  
  
Name .....  
  
Designation.....

**Notes:**

- (5) The mode of execution of the power of attorney should be in accordance with the procedure, if any, laid down by the applicable law and the charter documents of the executant(s) and the same should be under common seal of the executant affixed in accordance with the applicable procedure. Further, the person whose signatures are to be provided on the power of attorney shall be duly authorized by the executant(s) in this regard.
- (6) The person authorized under this Power of Attorney, in the case of the Bidding Company/Lead Member being a public company, or a private company which is a subsidiary of a public company, in terms of the Companies Act, 1956, with a paid up share capital of more than Rupees five crores, should be the Managing Director/ whole time director/manager appointed under section 269 of the Companies Act, 1956. In all

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other cases the person authorized should be a director duly authorized by a board resolution duly passed by the company.

In case of the Bidding Company/Lead Member being a foreign company, the same shall be signed by a person of equivalent position

- (7) In the event, power of attorney has been executed outside India, the same needs to be duly notarized by a notary public of the jurisdiction where it is executed.
- (8) Also, wherever required, the executant(s) should submit for verification the extract of the chartered documents and documents such as a Board resolution / power of attorney, in favour of the person executing this power of attorney for delegation of power hereunder on behalf of the executant(s).

--



**d) Power of Attorney to be provided by each of the Members of the Consortium (other than the Lead Member) in favor of the Lead Member**

**WHEREAS Rajasthan Rajya Vidyut Prasaran Nigam Limited** “*Authorized Representative*” have issued Request For Proposal (RFP) on 25.02.09 for inviting Bids in respect of supply of power to the Procurer(s) named in the RFP on the terms and contained in the RFP and the RFP Documents (as defined in RFP);

**AND WHEREAS** ....., ..... and ..... (Insert names of all Members of Consortium) the Members of the Consortium are desirous of submitting a Bid in response to the RFP, and if selected, undertaking the responsibility of supplying the contracted capacity of power to the Procurer(s) as per the terms of the RFP Documents;

**AND WHEREAS** all the Members of the Consortium have agreed under the Consortium Agreement dated ..... entered into between all the Members and submitted along with the Bid to appoint ..... (Insert the name and address of the Lead Member) as Lead Member to represent all the Members of the Consortium for all matters regarding the RFP and the RFP documents and the Bid;

**AND WHEREAS** pursuant to the terms of the RFP and the Consortium Agreement, we, the Members of the Consortium hereby designate M/s ..... (Insert name of the Lead Member) as the Lead Member to represent us in all matters regarding the Bid and the RFP, in the manner stated below:-

Know all men by these presents, We ..... (Insert name and address of the registered office of the Member-1), ..... (Insert name and address of the registered office of the Member-2) ..... (Insert name and address of the registered office of the Member-n) do hereby constitute, appoint and authorise .....(name and registered office address of the Lead Member), which is one of the Members of the Consortium, to act as the Lead Member and our true and lawful attorney, to do in our name and on our behalf, all such acts, deeds and things necessary in connection with or incidental to submission of Consortium’s Bid in response to the Request For Proposal dated 25.02.09 issued by the Authorized Representative including signing and submission of the Bid and all documents related to the Bid as specified in the RFP, including but not limited to undertakings, letters, certificates, acceptances, clarifications, guarantees or any other document, which the Authorized Representative may require us to submit. The aforesaid Attorney shall be further authorized for making representations to the Authorized Representative named in the RFP, and providing information / responses to the Authorized Representative named in the RFP, representing us and the Consortium in all matters before the Authorized Representative named in the RFP, and generally dealing with the Authorized Representative named in the RFP in all matters in connection with our Bid, till completion of the bidding process in accordance with the RFP.

We, as Members of the Consortium, hereby agree to ratify all acts, deeds and things done by our said attorney pursuant to this Power of Attorney and that all acts, deeds and things done by our aforesaid attorney shall be binding on us and shall always be deemed to have been done by us.

--

All the terms used herein but not defined shall have the meaning ascribed to such terms under the RFP.

**Signed by the within named**  
.....[Insert the name of the executant company]  
**through the hand of**  
Mr. ....  
**duly authorized by the Board to issue such Power of Attorney**

**Dated this** ..... **day of** .....

**Accepted**

.....  
**Signature of Attorney**  
(Name, designation and address of the Attorney)

**Attested**

.....  
(Signature of the executant)  
(Name, designation and address of the executant)

.....  
**Signature and stamp of Notary of the place of execution**

**Common seal of** ..... **has been affixed in my/our presence pursuant to Board of Director's Resolution dated**.....

**WITNESS:**

1. ....  
(Signature)  
  
Name .....

Designation.....

2. ....  
(Signature)  
  
Name .....

Designation.....

--

Notes:

- (5) The mode of execution of the power of attorney should be in accordance with the procedure, if any, laid down by the applicable law and the charter documents of the executant(s) and the same should be under common seal of the executant affixed in accordance with the applicable procedure. Further, the person whose signatures are to be provided on the power of attorney shall be duly authorized by the executant(s) in this regard.
- (6) The person authorized under this Power of Attorney, in the case of the Member being a public company, or a private company which is a subsidiary of a public company, in terms of the Companies Act, 1956, with a paid up share capital of more than Rupees five crores, should be the Managing Director/ whole time director/manager appointed under section 269 of the Companies Act, 1956. In all other cases the person authorized should be a director duly authorized by a board resolution duly passed by the company.

In case of the Bidding Company/Lead Member being a foreign company, the same shall be signed by a person of equivalent position

- (7) In the event, power of attorney has been executed outside India, the same needs to be duly notarized by a notary public of the jurisdiction where it is executed.
- (8) Also, wherever required, the executant(s) should submit for verification the extract of the chartered documents and documents such as a Board resolution / power of attorney, in favour of the person executing this power of attorney for delegation of power hereunder on behalf of the executant(s).

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**4.17 Format for the Consortium Agreement**

(To be on non-judicial stamp paper of appropriate value as per Stamp Act relevant to place of execution, duly signed on each page. Foreign entities submitting Bid are required to follow the applicable law in their country)

**FORM OF CONSORTIUM AGREEMENT BETWEEN**  
M/S....., M/S.....,  
M/S..... AND M/S.....  
FOR (.....)  
AS PER CLAUSE 2.2.4

**THIS Consortium Agreement** (hereinafter referred to as “Agreement”) executed on this..... day of .....Two thousand..... between M/s..... a company incorporated under the laws of ..... and having its Registered Office at ..... (hereinafter called the "**Party 1**", which expression shall include its successors, executors and permitted assigns), M/s ..... a company incorporated under the laws of ..... and having its Registered Office at ..... (hereinafter called the "**Party 2**", which expression shall include its successors, executors and permitted assigns) and M/s..... a Company incorporated under the laws of ..... and having its Registered Office at ..... (hereinafter called the "**Party n**", which expression shall include its successors, executors and permitted assigns) (The Bidding Consortium should list the name, address of its registered office and other details of all the Consortium Members) for the purpose of submitting the Bid in response to the RFP and in the event of selection as Successful Bidder to comply with the requirements as specified in the RFP and ensure execution of the RFP Documents as may be required to be entered into with the **Jaipur Vidyut Vitran Nigam Limited (JVVNL), Ajmer Vidyut Vitran Nigam Limited (AVVNL) and Jodhpur Vidyut Vitran Nigam Limited (JdVVNL)**.

Party 1, Party 2, and Party n are hereinafter collectively referred to as the “Parties” and individually as a “Party”.

**WHEREAS** the Rajasthan Rajya Vidyut Prasaran Nigam Limited the “Authorized Representative” desired to procure power on long term basis through tariff based competitive bidding process.

**WHEREAS**, the *Authorized Representative* had invited Bids, vide RFP dated 25.02.09 issued to..... [*Insert the name of purchaser of RFP*]

**AND WHEREAS** Clause 2.2.4 of the RFP stipulates that the Bidders qualifying on the strength of a Bidding Consortium shall submit a legally enforceable Consortium Agreement in a format specified in the RFP, whereby the Consortium Members undertake to be liable for their respective equity investment commitment for the formation of a Project Company and undertake to submit the Contract Performance Guarantee as required as per the provisions of the RFP, as specified herein.

**NOW THEREFORE, THIS INDENTURE WITNESSTH AS UNDER:**

In consideration of the above premises and agreement all the parties in this Consortium do hereby mutually agree as follows:

- 16. In consideration of the selection of the Consortium as the Successful Bidder by the Authorized Representative, we the Members of the Consortium and Parties to the Consortium Agreement do hereby unequivocally agree that M/s..... (Insert name of the Lead Member), shall act as the Lead Member as defined in the RFP for self and agent for and on behalf of ..... (the names of all the other Members of the Consortium to be filled in here).
- 17. The Lead Member is hereby authorized by the Members of Consortium and Parties to the Consortium Agreement to bind the Consortium and receive instructions for and on behalf of all Members.
- 18. The Lead Member shall be liable and responsible for ensuring the individual and collective commitment of each of the Members of the Consortium in discharging all their respective equity obligations. Each Consortium Member further undertakes to be individually liable for the performance of its part of the obligations without in any way limiting the scope of collective liability envisaged in this Agreement.
- 19. (Insert as applicable) The Consortium shall be responsible to incorporate a Project Company as a legal entity as per the provisions of the RFP, within fifteen (15) days of issue of LOI provided such a Project Company has not been incorporated by the Bidder prior to the submission of the Bid.

**OR**

The Consortium has incorporated a Project Company by the name .....(Insert name of the Project Company) to undertake the responsibilities and obligations for supply of power as per the provisions of the RFP Documents.

The percentage of equity holding of each Member of the Consortium in the Project Company shall be/is as follows:

Name	Percentage of equity holding in the Project Company
Party 1	....
....	....
Party n	....
<b>Total</b>	<b>100%</b>

**[Note: The percentage equity holding for any Consortium Member cannot be zero in the above table. Lead Member’s percentage equity holding cannot be less than 51% from the Effective Date up to a period of two (2) years after commencement of supply of power and twenty-six (26%) for a period of three (3) years thereafter.]**

20. In case of any breach of any of the equity investment commitment as specified under clause 5 above by any of the Consortium Members for the formation of the Project Company, the Lead Member shall be liable to meet the equity obligation.
21. Except as specified in the Agreement, it is agreed that sharing of responsibilities as aforesaid and equity investment obligations thereto shall not in any way be a limitation of responsibility of the Lead Member under these presents.
22. It is further specifically agreed that the financial liability for equity contribution of Lead Member shall, not be limited in any way so as to restrict or limit its liabilities. The Lead Member shall be liable irrespective of their scope of work or financial commitments.
23. This Consortium Agreement shall be construed and interpreted in accordance with the Laws of India and courts at Jaipur (Rajasthan) alone shall have the exclusive jurisdiction in all matters relating thereto and arising there under.
24. It is hereby agreed that the Lead Member shall furnish the Bid Bond, as stipulated in the RFP, on behalf of the Consortium.
25. It is hereby agreed that in case of selection of Bidding Consortium as the Successful Bidder, the Parties to this Consortium Agreement do hereby agree that they shall furnish the Contract Performance Guarantee on behalf of the Seller in favor of the Procurer(s), as stipulated in the RFP and PPA. The Lead Member shall be responsible for ensuring the submission of the CPG on behalf of all the Consortium Members.
26. It is further expressly agreed that the Consortium Agreement shall be irrevocable and, for the Successful Bidder, shall remain valid over the term of the PPA, unless expressly agreed to the contrary by the Procurer(s).
27. The Lead Member is authorized and shall be fully responsible for the accuracy and veracity of the representations and information submitted by the Consortium Members respectively from time to time in response to the RFP for the purposes of the Bid.
28. It is expressly understood and agreed between the Members that the responsibilities and obligations of each of the Members shall be as delineated as annexed hereto as Annexure-I forming integral part of this Agreement. It is further agreed by the Members that the above sharing of responsibilities and obligations shall not in any way be a limitation of joint and several responsibilities and liabilities of the Members, with regards to all matters relating to the supply of power envisaged in the RFP Documents.
29. It is clearly agreed that the Lead Member shall ensure performance under the agreements and if one or more Consortium Members fail to perform its /their respective obligations under the agreement(s), the same shall be deemed to be a default by all the Consortium Members.
30. It is hereby expressly agreed between the Parties to this Consortium Agreement that neither Party shall assign or delegate its rights, duties or obligations under this Agreement except with prior written consent of the Procurer(s).

This Consortium Agreement

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- (f) has been duly executed and delivered on behalf of each Party hereto and constitutes the legal, valid, binding and enforceable obligation of each such Party,
- (g) sets forth the entire understanding of the Parties hereto with respect to the subject matter hereof;
- (h) may not be amended or modified except in writing signed by each of the Parties and with prior written consent of Procurer(s):

**IN WITNESS WHEREOF**, the Parties to the Consortium Agreement have, through their authorized representatives, executed these presents and affixed common seals of their respective companies on the Day, Month and Year first mentioned above.

Common Seal of .....  
 has been affixed in my/our  
 presence pursuant to the  
 Board of Director's resolution  
 dated .....

For and on behalf of  
 Consortium Member (party 1)  
 M/s.....

.....  
 (Signature)

.....  
 (Signature of authorized  
 representative)

Name: .....  
 Designation:.....

Name: .....  
 Designation: .....  
 Place: .....  
 Date: .....

**Witness<sup>10</sup>:**

1.  
 .....  
 (Signature)  
 Name .....  
 Designation.....

2.  
 .....  
 (Signature)  
 Name .....  
 Designation.....

Common Seal of .....  
 has been affixed in my/our  
 presence pursuant to the  
 Board of Director's

For and on behalf of  
 Consortium Member (Party n)  
 M/s.....

<sup>10</sup> Separate witness for each Consortium Member should fill in the details.

resolution dated .....

.....  
(Signature)

Name:  
Designation:

.....  
(Signature of authorized representative)

Name:  
Designation:  
Place:  
Date:

**WITNESS <sup>1</sup>**

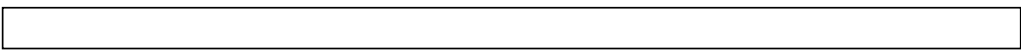
1. ....  
(Signature)  
Name .....  
Designation.....

2. ....  
(Signature)  
Name .....  
Designation.....

**Attested:**

.....  
(Signature)  
(Notary Public)

Place: .....  
Date: .....





**4.18 Format for Letter of Consent from Consortium Members**

**(On the letter head of each Member of the Consortium including Lead Member)**

**Date:** \_\_\_\_\_

**From :** \_\_\_\_\_

\_\_\_\_\_

**Tel.#:**

**Fax#:**

**E-mail address#:**

**To,  
Chief Engineer (RPPC)  
Rajasthan Rajya Vidyut Prasaran Nigam Limited  
Vidyut Bhawan, Janpath, Jyoti Nagar  
Jaipur-302005 (Rajasthan)**

**Sub: Request for Proposal, dated .... [Insert Date] for long term procurement of power under Case – 1 bidding procedure through tariff based competitive bidding.**

We, the undersigned Member of ..... (Insert name of the Bidding Consortium) have read, examined and understood the RFP and RFP Documents for the selection of Bidder(s) as prospective Seller(s) of power through tariff based competitive bidding (as per Guidelines for Determination of Tariff by Bidding Process for Procurement of Power by Distribution Licensees) for meeting the seasonal load requirements for supply to **Jaipur Vidyut Vitran Nigam Limited (JVNL), Ajmer Vidyut Vitran Nigam Limited (AVNL) and Jodhpur Vidyut Vitran Nigam Limited (JdVNL)**. We hereby confirm our concurrence with the RFP including in particular the Consortium Agreement and the Bid submitted by ..... (Insert name of the Lead Member) in response to the RFP. We confirm that the Bid has been reviewed and each element of the Bid is agreed to including but not limited to the investment commitment in the Project Company.

The details of contact person are furnished as under:

Name : .....  
Designation : .....  
Name of the Company : .....  
Address : .....  
Phone Nos. : .....  
Fax Nos. : .....  
E-mail address : .....

Dated the ..... day of ..... of 20...

Thanking you,  
Yours faithfully,

.....



(Signature, Name, Designation of Authorized Signatory of Consortium Member and Company's Seal)

Business Address:

Name and address of principal officer.

**4.19 Format for Bidder's composition and ownership structure**  
**If the Bidder is a Consortium, please provide this information for each Member including Lead Member.**

• **Corporate Details:**

Please provide the following information for the Bidder.

m. Company's Name, Address, Nationality and Director's details:

Name: \_\_\_\_\_

Registered/Principal Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Website Address: \_\_\_\_\_

Corporate Identification Number, if any: \_\_\_\_\_

Country of Origin: \_\_\_\_\_

Address for Correspondence: .....  
.....  
.....

n. Year of Incorporation: \_\_\_\_\_

o. Company's Business Activities:

p. Name of the authorized representative:

q. Telephone Number: \_\_\_\_\_

r. Email Address: \_\_\_\_\_

s. Telefax Number: \_\_\_\_\_

t. Status as a Bidder:  
(i) Bidding Company  
(ii) Lead Member of the Bidding Consortium  
(iii) Member of the Bidding Consortium

Note: (tick the applicable serial number)

u. Company's Local Address in India (if incorporated outside India):  
\_\_\_\_\_  
\_\_\_\_\_

--

v. Please provide the following documents:

(iii) Copy of the Memorandum and Articles of Association and certificate of incorporation or other equivalent organizational document (as applicable in the case of a foreign company), including their amendments, certified by the company secretary of the Bidding Company/each Member of the Consortium (as Attachment 1)

(iv) Authority letter in favor of **Rajasthan Rajya Vidyut Prasaran Nigam Limited** the “Authorized Representative” from the Bidding Company/each Member of the Consortium (as per format specified below) authorizing the Authorized Representative to seek reference from their respective bankers, lenders, financing institutions and any other person as given below in the Format for Authorization, as per Clause 2.1.7 of the RFP.

w. (Insert this point in case of Bidder being a Bidding Company) Whether the Bidder wishes to form a Project Company for the supply of power? ..... (Yes/No)

x. (Insert this point in case of Bidder being a Bidding Company) Whether the Bidder has already formed a Project Company:.....(Yes/No)

If Yes, the details of the Project Company as follows:

- i) Name of the Project Company .....
- ii) Name of the Equity Holder .....
- iii) Type and No. of Shares owned .....
- iv) % of equity holding .....
- v) Extent of voting control(%) .....
- vi) Date of incorporation .....

• **Details of Ownership Structure:**

Details of persons owning 10% or more of the total paid up equity of the Bidding Company / each Member of the Consortium.

Name of the Bidding Company/ Member of the Consortium: .....

Status of equity holding as on .....

Name of Equity Holder	Type and Number of Shares owned	% of Equity Holding	Extent of Voting Control (%)
1.			
2.			
3.			
4.			
5.			
....			

**Notes:**

- 3. Status of equity holding should be provided not earlier than 30 (thirty) days prior to Bid Deadline.
- 4. The above table is to be filled in separately for each Consortium Member if applicable.

- **Documents submitted in support of establishing the relationship with the Parent Company / Affiliate with the Bidding Company or with the Member of the Bidding Consortium (including Lead Member) in terms of the provisions of Clause 2.1.5 of this RFP:**

- 5. ....
- 6. ....
- 7. ....
- 8. ....

**For and on behalf of Bidding Company/ Member of the Consortium**

M/s.....

.....  
(Signature of authorized representative  
Name:.....  
Designation:.....  
Stamp:.....

Date:.....

Place: .....

**FORMAT FOR AUTHORISATION**

(On Non – judicial stamp paper duly attested by Notary Public)

**(In case of Bidding Consortium to be given separately by each Member)**

The undersigned hereby authorize(s) and request(s) all our Bankers, a list of which is attached herewith as Annexure A hereto, including its subsidiaries and branches, any person, firm, corporation or authority to furnish pertinent information deemed necessary and requested by **Rajasthan Rajya Vidyut Prasaran Nigam Limited** “Authorized Representative” to verify the authenticity of the documents / information submitted by us for meeting the Qualification Requirements in respect of our Bid for procurement of power on long term basis through tariff based competitive bidding process for meeting the requirements of **Jaipur Vidyut Vitran Nigam Limited (JVVNL)**, **Ajmer Vidyut Vitran Nigam Limited (AVVNL)** and **Jodhpur Vidyut Vitran Nigam Limited (JdVVNL)** and / or regarding our financial standing and general reputation.

For and on behalf of M/s..... (Insert Name of Bidding Company or Member of the Consortium)

.....  
Signature and Name of the authorized representative of the Company

Company rubber stamp/seal

.....  
(Signature of Notary Public)

(Name and Address of the Attorney)

Place:.....

Date:.....

--

**Annexure A**  
**List of Bankers**

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**4.20 A : FORMAT FOR QUALIFICATION REQUIREMENT (AS PER CLAUSE 2.1.2.1)**

To,  
Chief Engineer (RPPC)  
Rajasthan Rajya Vidyut Prasaran Nigam Limited  
Vidyut Bhawan, Janpath, Jyoti Nagar  
Jaipur-302005 (Rajasthan)

Dear Sir,

**Sub: Bid for procurement of power on *long* term basis through tariff based competitive bidding process in response to the RFP dated 25.02.09.**

We submit our Bid / Bids for the total capacity of ..... MW [Insert total offered capacity in MW; for multiple Financial Bids, mention sum total of offered capacity across all Financial Bids] for which we submit details of our Qualification Requirements.

Financial Bid	Offered Capacity in MW
1	..... MW
2	.....MW
...	
<b>Total of all Financial Bids</b>	<b>.....MW</b>

**[Note: Applicable in case of Bidding Company]**

We certify that the Financially Evaluated Entity (ies) had a Networth of Rs. ....  
Crore or equivalent USD\* computed as per instructions provided in Clause 2.1.2 of this RFP based on unconsolidated audited annual accounts (refer Note-2 below) of any of the last three (3) financial years immediately preceding the Bid Deadline.

Name of Financially Evaluated Entity**	Relationship with Bidding Company***	Networth (Rs. Crore)#	Financial Year
1			
2			
3			
....			
<b>Total Networth</b>			

--



- \* Equivalent USD shall be calculated as per provisions of Clause 2.1.2
- \*\* The Financially Evaluated Entity may be the Bidding Company itself
- \*\*\* The column for “Relationship with Bidding Company” is to be filled in only in case financial capability of Parent Company and/ or Affiliate has been used for meeting Qualification Requirements.
- # In case of more than one Financial Bid submitted by the Bidder, the Networth shall be computed and evaluated on the basis of the sum total of the capacities offered by the Bidder in its Financial Bids.

**[Note: Applicable in case of Bidding Consortium]**

We certify that the Financially Evaluated Entity (ies) had a Networth of Rs. .... Crore or equivalent USD\* computed as per instructions provided in Clause 2.1.2 of the RFP and based on unconsolidated audited annual accounts (refer Note-2 below) of any of the last three (3) financial years immediately preceding the Bid Deadline.

Name of Consortium Member	Equity commitment in the Project Company (%)	Networth of Member (Rs.Crore) (As per table below)	Networth Requirement to be met by the Member in proportion to the equity commitment (Rs.Crore) (Total Networth requirement * % at Column no. 2 )	Whether the Member meets the Networth Requirement
(1)	(2)	(3)	(4)	(5)
1				Yes/No
2				Yes/No
..				Yes/No
<b>Total Networth</b>				

**Note:** The total Networth requirement will be calculated based on the offered capacity in MW x Rs. 0.5 crores

**Member – I (Lead Member)**

**(Note: Similar particulars for each Member of the Consortium is to be furnished, duly certified by the Member’s Statutory Auditors)**

- v. Name of Member:
- vi. Total Networth requirement: Rs \_\_\_\_\_crores
- vii. Percentage of equity commitment for the Project Company by the Member \_\_\_%
- viii. Networth requirement for the Member\*\*\*: Rs. \_\_\_\_\_crores.

Name of Financially Evaluated Entity**	Relationship with Members of Bidding Consortium ***	Networth (Rs. Crore) ****	Financial Year
1			
2			
3			
....			
<b>Total Networkth</b>			

\* Equivalent USD shall be calculated as per provisions of Clause 2.1.2

\*\* The Financially Evaluated Entity may be a Member of the Bidding Consortium itself

\*\*\* The column for “Relationship with Bidding Consortium” is to be filled in only in case financial capability of Parent Company and/ or Affiliate has been used for meeting Qualification Requirements.

\*\*\*\* Networth requirement to be met by a Member shall be in proportion to the equity commitment of the Member for the Project Company and in case of more than one Financial Bid submitted by the Bidding Consortium, the Networth shall be computed and evaluated on the basis of the sum total of the capacities offered by the Bidder in its Financial Bids.

**Yours faithfully**

*(Signature and stamp (on each page) of Managing Director /Chief Executive Officer /Manager [refer Notes 3 and 4 below] of Bidding Company/ Member of Consortium)*

**Name:**

**Date:**

**Place:**

*(Signature and Stamp (on each page) of Statutory Auditors of Bidding Company/ Member of Consortium)*

**Name:**

**Date:**

**Place:**

Please also affix common seal of Bidding Company/ Member in a Bidding Consortium

Common Seal of .....  
has been affixed in my/our  
presence pursuant to the

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Board of Director's  
resolution dated .....

.....

(Signature)

Name:

Designation:

**WITNESS:**

1. ....  
(Signature)

Name .....

Designation.....

Date:

2. ....  
(Signature)

Name .....

Designation.....

Date:

**Notes:**

5. Along with the above format, in a separate sheet, please provide details of computation of Networth duly certified by Statutory Auditor.
6. Audited consolidated annual accounts of the Bidder may also be used for the purpose of financial criteria provided the Bidder has at least 26% equity in each company whose accounts are merged in the audited consolidated accounts and provided further that the financial capability of such companies (of which accounts are being merged in the consolidated accounts) shall not be considered again for the purpose of evaluation of the Bid.
7. Managing Director/ Chief Executive Officer, being a full time director on the Board of the Bidding Company/ Member in case of a Consortium.
8. In case of Manager, the Company should confirm through a copy of Board Resolution attested by Company Secretary that the concerned person is appointed as Manager as appointed under Section 269 of the Companies Act, for the purpose in question. The Company Secretary shall also certify that the Company does not have a Managing Director or Chief Executive Officer. In case of the Bidding Company/Member being a foreign company, the same shall be signed by a person of equivalent position.

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**B FORMAT FOR QUALIFICATION REQUIREMENT (AS PER CLAUSE 2.1.2.2)**

(This format should be on the Letter Head of the Bidding Company/ Lead Member of the Bidding Consortium)

To,  
Chief Engineer (RPPC)  
Rajasthan Rajya Vidyut Prasaran Nigam Limited  
Vidyut Bhawan, Janpath, Jyoti Nagar  
Jaipur-302005 (Rajasthan)

Dear Sir,

**Sub: Bid for procurement of power on *long term* basis through tariff based competitive bidding process in response to the RFP dated 25.02.09.**

We hereby submit following details/documents in support of meeting the Qualification Requirements prescribed in Clause 2.1.2.2. [In Case the Bidder is a Trading Licensee, the Bidder shall ensure that the entity developing the power station has obtained the Consents, Clearances and Permits and the Bidder shall submit documentary evidence regarding the same in its Bid.]

- 7      **Land:** Area of land acquired and taken possession: ..... [Insert the area of land acquired]  
We declare that the aforesaid area is at least 50% of the total area of the land as indicated in the application filed with the competent authority for seeking environmental clearance.  
“(In case of land to be acquired under the Land Acquisition Act 1894): Copy of notification issued for such land under Section 4 of the Land Acquisition Act, 1894 is enclosed.”  
(In all other cases for purchase of land) Documentary evidence (sale deed or any other equivalent documents) to establish the ownership of such land is enclosed.

**8      Fuel:**

- Domestic coal: Name of the allocated mine (in case of mine allocation):  
Proven reserves of the mine (in case of mine allocation):  
Quantity of coal required for the power station at Normative Availability on an annual basis and supporting computation for the same:  
Particulars of documents enclosed in support of the above:
  
- Imported coal :Name of the mine acquired or owned and country:  
Proven reserves of the mine (in case of mine allocation):  
At least fifty percent (50%) of the quantity of coal required for the power station at Normative Availability on an annual basis and supporting computation for the same:  
OR

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Copy of the long term fuel supply agreement (s) for at least fifty percent (50%) of the total the quantity of coal required for the power station at Normative Availability on an annual basis:

Particulars of documents enclosed in support of the above:

- Domestic (piped) Gas: Quantity of gas required for the power station at Normative Availability on an annual basis and supporting computation for the same. Copy of the long term fuel supply agreement (s) for the quantity of gas required for the power station at Normative Availability on an annual basis. (Enclose copy attested by the authorized signatory of the Bid)
  
- RLNG (Imported gas): At least fifty percent (50%) of the quantity of gas required for the power station at Normative Availability on an annual basis and supporting computation for the same  
Copy of the long term fuel supply agreement (s) for the quantity of gas required for the power station at Normative Availability on an annual basis. (Enclose copy attested by the authorized signatory of the Bid)
  
- 9 Water: Approval from the concerned state irrigation department or any other relevant authority for the quantity of water required for the power station. (Enclose copy attested by the authorized signatory of the Bid)
  
- 10 Environmental Clearance: (Enclose copy attested by the authorized signatory of the Bid) Copy of the proposal for environmental clearance submitted to the concerned administrative authority responsible for according final approval in the central/state govt. as the case may be.
  
- 11 Forest Clearance: (Enclose copy attested by the authorized signatory of the Bid ) Copy of the proposal for forest clearance (only in case where forest land to be acquired for power station) submitted to the concerned administrative authority responsible for according final approval in the central/state govt. as the case may be.
  
- 12 In case of existing power station: Documentary evidence regarding commissioning of the power station and available surplus capacity equivalent to the capacity offered in our Bid.

**(Insert in case of Bidder being a Trading Licensee:** (Enclose copy attested by the authorized signatory of the Bid): Copy of the exclusive power purchase agreement executed by the Trading Licensee with the supplier of power.)

**Yours faithfully**

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*(Signature and stamp (on each page) of Managing Director /Chief Executive Officer /Manager [refer Notes 1 and 2 below] of Bidding Company/ Member of Consortium)*

**Name:**

**Date:**

**Place:**

Please also affix common seal of Bidding Company/ Member in a Bidding Consortium

Common Seal of .....  
has been affixed in my/our  
presence pursuant to the  
Board of Director's  
resolution dated .....

.....

(Signature)

Name:

Designation:

**WITNESS:**

1. ....  
(Signature)

Name .....

Designation.....

Date:

2. ....  
(Signature)

Name .....

Designation.....

Date:

**Notes:**

1. Managing Director/ Chief Executive Officer, being a full time director on the Board of the Bidding Company/ Member in case of a Consortium.

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2. In case of Manager, the Company should confirm through a copy of Board Resolution attested by Company Secretary that the concerned person is appointed as Manager as appointed under Section 269 of the Companies Act, for the purpose in question. The Company Secretary shall also certify that the Company does not have a Managing Director or Chief Executive Officer. In case of the Bidding Company/Member being a foreign company, the same shall be signed by a person of equivalent position

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#### 4.21 Format of Undertaking

##### (A) Bidder's Undertaking

[On the Letter Head of the Bidding Company/Lead Member of Bidding Consortium]

To,

**Chief Engineer (RPPC)  
Rajasthan Rajya Vidyut Prasaran Nigam Limited  
Vidyut Bhawan, Janpath, Jyoti Nagar  
Jaipur-302005 (Rajasthan)**

Dear Sir,

**Sub: Bidders' Undertakings for Bid for supply of power to Procurer(s) in response to the RFP dated 25.02.09**

13. We give our unconditional acceptance to the RFP and RFP Documents issued by Authorized Representative as a part of the RFP dated 25.02.09, and as amended. We shall ensure that the Seller shall execute such RFP Documents as per the provisions of the RFP.
14. We have submitted our Financial Bid(s) strictly as per Format 4.10 of the RFP, without any deviations, conditions and without mentioning any assumptions or notes for the Financial Bid in the said format.
15. We have submitted the Bid on the terms and conditions contained in the RFP.
16. Our Bid (including Financial Bid) is valid up to the period required under Clause 2.9 of the RFP.
17. Our Bid (including Financial Bid) has been duly signed by authorised signatory and closed in the manner and to the extent indicated in the RFP and the Power of Attorney/ Board Resolution as per Clause 2.4.1.1 in requisite format as per RFP has been enclosed in original with this undertaking.
18. *(Insert in case the Bidder is not a Trading Licensee)* "We undertake that we shall not submit any bid, on the basis of the same generation source and quantum of power from such source as mentioned in our Bid, in any other bid process till the time of selection of Successful Bidder and issue of LOI or the termination of the process, which ever is earlier, subject to a maximum of period of one hundred and twenty (120) days from the Bid Deadline."

*(Insert in case the Bidder is a Trading Licensee)* "We undertake that we shall not submit any bid, on the basis of power purchase agreement submitted along with our Bid for the same quantum of power and generation source specified therein, for any other bid process till the selection of the Successful Bidder(s) and issue of LOI, or till the

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termination of the process, which ever is earlier, subject to a maximum of period of one hundred and twenty (120) days from the Bid Deadline.

19. (Insert in case the Bidder is a Trading Licensee) We undertake that the power purchase agreement submitted by us as part of the Non Financial Bid is for the exclusive purpose of supplying power to the Procurer(s) under this bid process..
20. (Insert in case of incorporation of Project Company by the Bidding Company/Bidding Consortium) We undertake that if we are selected as the Successful Bidder we shall transfer all Consents, Clearances and Permits in the name of the Project Company within the period specified in the PPA, if such Consents, Clearances and Permits have been obtained in the name of a company other than the Project Company prior to the submission of our Bid.
21. We have assumed that if we are selected as the Successful Bidder, the provisions of the Consortium Agreement submitted along with the Bid, to the extent and only in relation to equity lock in and our liability thereof shall get modified to give effect to the provisions of clause 2.7 of the RFP and Article 15.2 of the PPA. (Applicable only in case of a Bidding Consortium)
22. We confirm that our Bid meets the following conditions:
  - a) The Scheduled Delivery Date is not later than the date specified in the RFP, subject to the provisions of the PPA.
  - b) The quantum of power offered in our Bid is equal to or greater than the Minimum Bid Capacity and is for the following offered capacity.

<b>Financial Bid</b>	<b>Offered Capacity in MW</b>
1	..... MW
2	.....MW
...	
<b>Total of all Financial Bids</b>	<b>.....MW</b>

23. We confirm that the Financial Bid(s) conform(s) to all the conditions in the RFP including:
  - a) Ratio of minimum and maximum Quoted Capacity Charges during the Contract Years for which Tariff has been quoted in Format 4.10 of the Bid is not less than zero point seven (0.7) as provided in Clause 2.4.1.1(B)(x) of the RFP.
  - b) Financial Bid(s) is/are in the prescribed Format 4.10, and is submitted duly signed by the authorised signatory
  - c) Financial Bid(s) is/are unconditional
24. We have neither made any statement nor provided any information in this Bid, which to the best of our knowledge is materially inaccurate or misleading. Further, all the confirmations, declarations and representations made in our Bid are true and accurate. In case this is found to be incorrect after our selection as Successful Bidder, we agree

that the same would be treated as a Seller's event of default under PPA, and consequent provisions of PPA shall apply.

.....  
**Signature and name of authorised signatory in whose name Power of Attorney/ Board Resolution as per Clause 2.4.1.1 is issued**

Original Power of Attorney/ Board Resolution as per Clause 2.4.1.1 is enclosed.

**Rubber stamp of the Bidder to be affixed.**

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**(B) Undertaking from the Financially Evaluated Entity or its Parent Company/  
Ultimate Parent Company  
(On the Letter Head of the Financially Evaluated Entity or its Parent Company/  
Ultimate Parent Company)**

Name:  
Full Address:  
Telephone No.:  
E-mail address:  
Fax / No.:

**To,  
Chief Engineer (RPPC)  
Rajasthan Rajya Vidyut Prasaran Nigam Limited  
Vidyut Bhawan, Janpath, Jyoti Nagar  
Jaipur-302005 (Rajasthan)**

**Dear Sir,**

We refer to the Request for Proposal dated 25.02.09 issued by you for procurement of power for *long* term basis through tariff based competitive bidding process for meeting the requirements of Procurer(s).

(Insert in case of Bidding Company:

“We have carefully read and examined in detail the RFP, including in particular, Clause 2.4.1.1 of the RFP, regarding submission of an undertaking.

We have also noted the amount of the Contract Performance Guarantee required to be submitted as per Clause 2.13 of the RFP by the ..... (Insert the name of the Bidding Company) for the supply of power in the event of it being selected as the Successful Bidder”.

In view of the above, we hereby undertake to you and confirm that in the event of failure of ..... (Insert name of the Bidding Company) to submit the Contract Performance Guarantee in full or in part at any stage, as specified in the RFP, we shall submit the Contract Performance Guarantee for the amount not submitted by ..... (Insert name of the Bidding Company]”).))

(Insert in case of Member of a Consortium:

“We have carefully read and examined in detail the RFP, including in particular, Clause 2.4.1.1 of the RFP, regarding submission of an undertaking.

We confirm that M/s. .... (Insert name of Bidding Company / Consortium Member) has been authorized by us to use our financial capability for meeting the Qualification Requirements as specified in Clause 2.1 of the RFP referred to above.

We have also noted the amount of the Contract Performance Guarantee required to be submitted as per Clause 2.13 of the RFP by the ..... (Insert the

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name of the Consortium Member) for the supply of power in the event of it being selected as the Successful Bidder”).

In view of the above, we hereby undertake to you and confirm that in the event of failure of ..... (Insert name of the Consortium Member) to submit the Contract Performance Guarantee on behalf of the Seller in full or in part at any stage, as specified in the RFP, we shall submit the Contract Performance Guarantee for the amount not submitted by ..... (Insert name of the Consortium Member]”).).

**[Note: Insert the following para in case of a Bidding Consortium OR a Bidding Company opting to invest through a Project Company]**

“We have carefully read and examined in detail the RFP, including in particular, Clause 2.4.1.1 of the RFP, regarding submission of an undertaking.

We have also noted the amount of the equity investment required to be made in the Project Company by the ..... (Insert the name of the Bidding Company/Consortium Member) to be incorporated to undertake the obligations under the PPA for the supply of power.

In view of the above, we hereby undertake to you and confirm that in the event of failure of ..... (Insert name of the Bidding Company/Member of the Consortium) to invest in full or in part, in the equity share capital of the Project Company as specified in the Bid, we shall invest the said amount not invested by ..... (Insert name of the Bidding Company/Member of the Consortium).]”).

We have attached hereto certified true copy of the Board Resolution whereby the Board of Directors of our Company has approved issue of this Undertaking by the Company.

All the terms used herein but not defined, shall have the meaning as ascribed to the said terms under the RFP.

**Signature of Chief Executive Officer / Managing Director / Manager [Refer Notes]**

**Common seal of ..... has been affixed in my/our presence pursuant to Board of Director’s Resolution dated.....**

**WITNESS**

1. ....  
(Signature)  
Name .....  
Designation.....

2. ....  
(Signature)

[Empty rectangular box]

**Name .....**

**Designation.....**

**Notes:**

1. Managing Director/ Chief Executive Officer, being a full time director in the Board of the Bidding Company/ Member of a Consortium.
2. In case of Manager, the Company should confirm through a copy of Board Resolution attested by Company Secretary that the concerned person is appointed as Manager as appointed under Section 269 of the Companies Act, 1956 for the purpose in question. The Company Secretary shall also certify that the Company does not have a Managing Director or Chief Executive Officer. In case of the Bidding Company/Member being a foreign company, the same shall be signed by a person of equivalent position.

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**4.22 Format for Board Resolution**

**Format for the Board resolution to be passed by each Financially Evaluated Entity/ its Parent Company /Ultimate Parent Company.**

The Board, after discussion, at the duly convened Meeting on ..... (Insert date), with the consent of all the Directors present and in compliance of the provisions of the Companies Act, 1956, passed the following Resolution:

**1. RESOLVED THAT** pursuant to the provisions of the Companies Act, 1956 and compliance thereof and as permitted under the Memorandum and Articles of Association of the company, approval of the Board be and is hereby accorded for issuing an Undertaking to the Procurer/ Authorized Representative, in the format specified in the RFP, draft of which is attached hereto and initialled by the Chairman whereby the company undertakes to provide the .....percent (... %) [Insert 100% in case of Bidding Company and percent of equity investment in the Project Company in case of Member of Consortium] of the Contract Performance Guarantee, as per the terms and conditions of the RFP, representing the total amount of Contract Performance Guarantee required to be provided by the ..... (Insert the name of the Bidding Company / Consortium Member), in case of failure of the ..... (Insert the name of the Bidding Company / Consortium Member) to provide such Contract Performance Guarantee.

**[Note: Insert the following para in case of a Bidding Company opting to invest through a Project Company or a Consortium]**

**2. FURTHER RESOLVED THAT** pursuant to the provisions of the Companies Act, 1956 and compliance thereof and as permitted under the Memorandum and Articles of Association of the company, approval of the Board be and is hereby accorded for issuing an undertaking to the Procurer/ Authorized Representative whereby the company undertakes to invest equity in the Project Company to the extent of .....percent (... %), as per the terms and conditions of the RFP, representing the amount of equity required to be provided by ..... (Insert the name of the Bidding Company / Consortium Member), in case of failure of ..... (Insert the name of the Bidding Company / Consortium Member) to invest such equity.

**3. FURTHER RESOLVED THAT** Mr/Ms....., be and is hereby authorized to take all the steps required to be taken by the Company for submission of Bid, including in particular, signing the Bid, making changes thereto and submitting amended Bid, all the documents related to the Bid, certified copy of this Board resolution or letter or undertakings etc, required to be submitted to the Procurer/ Authorized Representative as part of the Bid or such other documents as may be necessary in this regard.

**[Note: In the event the Bidder is a Bidding Consortium, the following Board resolution no. 4 also needs to be passed by the Lead Member of the Bidding Consortium]**

**4. FURTHER RESOLVED THAT** approval of the Board be and is hereby accorded to contribute such additional amount over and above the percentage limit (specified for the

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Lead Member in the Consortium Agreement) to the extent becoming necessary towards the total equity share in the Project Company, obligatory on the part of the Consortium pursuant to the terms and conditions contained in the Consortium Agreement dated ..... executed by the Consortium as per the provisions of the RFP.

**[Note: The following resolution no. 5 is to be provided by the Bidding Company /Lead Member of the Consortium only]**

**5. FURTHER RESOLVED THAT** Mr/Ms....., be and is hereby authorized to take all the steps required to be taken by the Company for submission of Bid, including in particular, signing the Bid, making changes thereto and submitting amended Bid, all the documents related to the Bid, certified copy of this Board resolution or letter or undertakings etc, required to be submitted to the Procurer/ Authorized Representative as part of the Bid or such other documents as may be necessary in this regard.

**Certified True Copy**

**Signature and stamp of Company Secretary / Managing Director of Financially Evaluated Entity/ its Parent Company /Ultimate Parent Company**

**Notes:**

- 5) This certified true copy should be submitted on the letterhead of the Company, signed by the Company Secretary / Managing Director of the Financially Evaluated Entity/ its Parent Company /Ultimate Parent Company.
- 6) The contents of the format may be suitably re-worded indicating the identity of the entity passing the resolution.
- 7) In case of the Board resolution being provided by a company incorporated in India, the Board resolution needs to be notarized by a notified notary. In the event the Board resolution is from a company incorporated outside India, the same needs to be duly notarized in its jurisdiction.
- 8) This format may be modified only to the limited extent required to comply with the local regulations and laws applicable to a foreign entity submitting this resolution. For example, reference to Companies Act 1956 may be suitably modified to refer to the law applicable to the entity submitting the resolution. However, in such case, the foreign entity shall submit an unqualified opinion issued by the legal counsel of such foreign entity, stating that the Board resolutions are in compliance with the applicable laws of the respective jurisdictions of the issuing company and the authorizations granted therein are true and valid.

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**4.23 Format for Bid Bond**

**FORMAT OF THE UNCONDITIONAL AND IRREVOCABLE BANK GUARANTEE FOR BID BOND**

(To be on non-judicial stamp paper of appropriate value as per Stamp Act relevant to place of execution. Foreign entities submitting Bids are required to follow the applicable law in their country.)

In consideration of the ..... (Insert name of the Bidder) submitting the Bid *inter alia* for **supply of power on long term basis through tariff based competitive bidding process for meeting the requirements of Procurer(s)** in response to the RFP dated 25.02.09 issued by **Rajasthan Rajya Vidyut Prasaran Nigam Limited**, (hereinafter referred to as Authorized Representative) and such Authorized Representative agreeing to consider the Bid of ..... [Insert the name of the Bidder] as per the terms of the RFP, the ..... (Insert name and address of the bank issuing the Bid Bond, and address of the head office) (here in after referred to as “Guarantor Bank”) hereby agrees unequivocally, irrevocably and unconditionally to pay to the Authorized Representative or its authorized representative at Jaipur (Rajasthan) forthwith on demand in writing from the Authorized Representative or any representative authorized by it in this behalf an amount not exceeding Rupees ..... (Rs.....) only [Insert amount not less than that derived on the basis of Rs. 3 lakhs per MW multiplied with the total quantum of power offered by the Bidder], on behalf of M/s. ....[Insert name of the Bidder].

This guarantee shall be valid and binding on the Guarantor Bank up to and including ..... (Insert date of validity of Bid Bond in accordance with Clause 2.12 of this RFP) and shall not be terminable by notice or any change in the constitution of the Guarantor Bank or by any other reasons whatsoever and our liability hereunder shall not be impaired or discharged by any extension of time or variations or alternations made, given, or agreed with or without our knowledge or consent, by or between concerned parties.

Our liability under this Guarantee is restricted to Rupees ..... (Rs... ..) only. Our Guarantee shall remain in force until **29.10.09** or its authorized representative shall be entitled to invoke this Guarantee until **28.11.09**.

The Guarantor Bank hereby expressly agrees that it shall not require any proof in addition to the written demand from the Authorized Representative or its authorized representative, made in any format, raised at the above mentioned address of the Guarantor Bank, in order to make the said payment to the Authorized Representative or its authorized representative.

The Guarantor Bank shall make payment hereunder on first demand without restriction or conditions and notwithstanding any objection, disputes, or disparities raised by the Bidder or any other person. The Guarantor Bank shall not require the Authorized Representative or its authorized representative to justify the invocation of this BANK GUARANTEE, nor shall the Guarantor Bank have any recourse against the Authorized Representative or its authorized representative in respect of any payment made hereunder.

This BANK GUARANTEE shall be interpreted in accordance with the laws of India and the courts at Jaipur (Rajasthan) shall have exclusive jurisdiction.

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The Guarantor Bank represents that this BANK GUARANTEE has been established in such form and with such content that it is fully enforceable in accordance with its terms as against the Guarantor Bank in the manner provided herein.

This BANK GUARANTEE shall not be affected in any manner by reason of merger, amalgamation, restructuring, liquidation, winding up, dissolution or any other change in the constitution of the Guarantor Bank.

This BANK GUARANTEE shall be a primary obligation of the Guarantor Bank and accordingly, the Authorized Representative or its authorized representative shall not be obliged before enforcing this BANK GUARANTEE to take any action in any court or arbitral proceedings against the Bidder, to make any claim against or any demand on the Bidder or to give any notice to the Bidder to enforce any security held by Authorized Representative or its authorized representative or to exercise, levy or enforce any distress, diligence or other process against the Bidder.

The Guarantor Bank acknowledges that this BANK GUARANTEE is not personal to the Authorized Representative and may be assigned, in whole or in part, (whether absolutely or by way of security) by the Authorized Representative to any entity to whom it is entitled to assign its rights and obligations under the RFP Documents.

The Guarantor Bank hereby agrees and acknowledges that Authorized Representative shall have a right to invoke this Bank Guarantee either in part or in full, as it may deem fit.

Notwithstanding anything contained hereinabove, our liability under this Guarantee is restricted to Rs ..... (Rs..... only) and it shall remain in force until **29.10.09**, with an additional claim period of thirty (30) days thereafter. We are liable to pay the guaranteed amount or any part thereof under this BANK GUARANTEE only if the Authorized Representative or its authorized representative serves upon us a written claim or demand.

In witness whereof the Bank, through its authorized officer, has set its hand and stamp on this ..... day of ..... at .....

**Witness:**

1. ....

**Signature**

Signature  
Name and address.

Name:  
Designation with Bank Stamp

2. ....

Signature  
Name and address

Attorney as per power of attorney No. ....

For:

..... [Insert Name of the Bank]

**Banker's Stamp and Full Address:**

Dated this ..... day of ..... 20.....

Note: The Stamp Paper should be in the name of the Executing Bank.

**4.24 Format for Financial Bid**

- **Total capacity of power (in MW) offered by the Bidder: ..... MW (..... MW) [To be inserted both in words and figures]**
- **Fractions of the offered total capacity of power (in MW)\* (insert as applicable) (Refer ‘b’ of instructions below):**
  - .....MW (..... MW) [To be inserted both in words and figures],
  - ..... MW (..... MW) [To be inserted both in words and figures],
  - ..... MW (..... MW) [To be inserted both in words and figures].
- **Name of the Interconnection Point ..... (To be inserted by the Bidder)**
- **Name of the Injection Point ..... (To be inserted by the Bidder)\*\***
- **Region and State in which the Injection Point is located ..... (To be inserted by the Bidder)**
- **Whether the STU system be used to transmit power between the Interconnection Point and the Injection Point?: (Insert “Yes” or “No”)**
- **% Transmission loss in STU system\*\*\* ..... (To be inserted by the Bidder only if STU system is involved at Bidder’s end)**
- **Name(s) of the regional ISTS to be involved in transmission of power between the Injection Point and the Delivery Point: ..... (To be inserted by the Bidder)**

\* The Procurer(s) can contract the total capacity of power offered by the Bidder or any combination of the fractions of the offered total capacity.

\*\* Injection Point would be either a CTU Interface or the Delivery Point, at which the Bidder shall supply power to the Procurer(s)

\*\*\* Losses to be considered as mentioned in the relevant tariff orders of the Appropriate Commission as on seven (7) days prior to Bid Deadline.

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Contract Year	Commencement Date of Contract Year	End Date of Contract Year	Quoted Non Escalable Capacity Charges	Quoted Escalable Capacity Charges	Quoted Non Escalable Energy Charges	Quoted Escalable Energy Charges	Quoted Non Escalable Energy Charges	Quoted Escalable Energy Charges	Quoted Non Escalable Inland Transportation Charges	Quoted Escalable Inland Transportation Charges	Quoted Non Escalable Overseas Transportation Charges	Quoted Escalable Overseas Transportation Charges	Quoted Non Escalable Fuel Handling Charges	Quoted Escalable Fuel Handling Charges
(1)	(2)	(3)	(Rs./ kWh) for Scenario 1,2,3,4,5,6	(Rs./ kWh) for Scenario 1,2,3,4,5,6	(Rs./ kWh) for Scenario 1, 2, 5, 6	(Rs./ kWh) for Scenario 1, 2, 5	(USD/ kWh) for Scenario 3, 4	(USD/ kWh) for Scenario 3, 4	(Rs./ kWh) for Scenario 1, 2, 3, 4, 5	(Rs./ kWh) for Scenario 1, 2, 3, 4, 5	(USD/ kWh) for Scenario 3, 4	(USD/ kWh) for Scenario 3, 4	(Rs./ kWh) for Scenario 3, 4	(Rs./ kWh) for Scenario 3, 4
		March		above		above		above		above		above		above
	1-Apr	31st March		Same as above		Same as above		Same as above		Same as above				Same as above
	1-Apr	31st March		Same as above		Same as above		Same as above		Same as above				Same as above
	1-Apr	Last Anniversary of the Contract Period		Same as above		Same as above		Same as above		Same as above				Same as above

**Signature of authorized signatory in whose name Power of Attorney as per Clause 2.4.1.1 is issued.:**

Name and designation of authorized signatory : .....

Place: .....

Date: .....

**Instructions:**

- i) The Bidder may quote for any quantum of power up to the Requisitioned Capacity for the full contract period but not less than the Minimum Bid Capacity.
- j) The Bidder may submit options for fractional capacity (offered part quantum) which it is willing to supply at the same quoted tariff. The number of options for fractional capacity is left to the discretion of the Bidder.
- k) The Quoted Tariff in Rs./kWh shall be provided up to three (3) decimal points and upto five (5) decimal points in case of Quoted Tariff in USD.
- l) All pages of this Format shall be signed by the authorized signatory in whose name Power of Attorney as per Clause 2.4.1.1 is issued.
- m) Ensure **25** values of Non Escalable tariff components and only 1 value for Escalable components.
- n) The Bidder shall not be allowed to submit different Quoted Tariffs for power proposed to be supplied from the same generation source. The Bidder shall submit different Financial Bids for power proposed to be supplied from different generation sources,
- o) The contents of this format shall be clearly typed.
- p) In case of a hydel generation source, the Bidder shall fill in only the Columns 4, 5 and 6 of this Format. The Escalable Energy Charges shall not be applicable for evaluation or payment in such case.

--

#### 4.25 Format of checklist for submission of Bid

Submission of Bid requirements	Response (Yes/No)
Covering Letter as per Format 4.1	
Original Power of Attorney as per Format 4.2	
Consortium Agreement as per Format 4.3 (if Bid is submitted by a Bidding Consortium)	
Letter of consent from Consortium Members as per Format 4.4 (if Bid is submitted by a Bidding Consortium)	
Bidder's composition and ownership structure as per Format 4.5	
Details of meeting Qualification Requirement. as per Format 4.6 (A) and (B)	
Documentary evidence for meeting the Qualification Requirement as per Format 4.6 (A) and (B)	
Bidder's Undertaking as per Format 4.7 (A)	
Undertaking from the Financially Evaluated Entity or its Parent Company/ Ultimate Parent Company as per Format 4.7 (B)	
Applicable Board Resolutions as per Format 4.8	
Bid Bond as per Format 4.9	
Financial Bid as per Format 4.10	
Checklist of submission of Bid as per this Format 4.11	

Submission of Bid requirements	Response (Yes/No)
<p>Disclosure as per Format 4.12</p> <p>Details of source of power and primary fuel as per Format 4.13;</p> <p>Certificate of relationship of Parent Company or Affiliate with the Bidding Company or with the Member of the Bidding Consortium, including the Lead Member as per Format 4.14;</p> <p>Calculation sheets detailing computation of Networth considered for meeting Qualifying Requirements.</p> <p>Last 3 financial years' unconsolidated/consolidated audited annual accounts of the Bidder/ each Member (or Financially Evaluated Entity, if different from the Bidder/ each Member) duly certified by the Statutory Auditor.</p> <p>Authority letter in favour of <b>Rajasthan Rajya Vidyut Prasaran Nigam Limited</b> from the Bidder authorising <b>Rajasthan Rajya Vidyut Prasaran Nigam Limited</b> to seek reference from their respective bankers &amp; others.</p> <p>Initialing of all pages of Bid by authorized signatory.</p>	

**Signature of authorized signatory in whose name Power of Attorney as per Clause 2.4.1.1 is issued.:**

Name and designation of authorized signatory : .....

Place: .....

Date: .....



#### 4.26 Format for Disclosure

(On the Letter Head of Bidding Company / Each Member in a Bidding Consortium)

#### Disclosure

To:

**Chief Engineer (RPPC)  
Rajasthan Rajya Vidyut Prasaran Nigam Limited  
Vidyut Bhawan, Janpath, Jyoti Nagar  
Jaipur-302005 (Rajasthan)**

**Sub:** Bidders' Disclosure for Bid for supply of power to Procurer(s) in response to the RFP dated 25.02.09

We hereby declare that the following companies with which we have direct or indirect relationship are also separately participating in this bidding process as per following details

Sl. No.	Name of the Company	Relationship
4.		
5.		
6.		

Further we confirm that we don't have any Conflict of Interest with any other Bidder participating in this bid process.

.....  
*Signature of Chief Executive Officer / Managing Director / Manager*

#### Notes:

4. Managing Director/ Chief Executive Officer, being a full time director in the Board of the Bidding Company/ Manager.
5. In case of Manager, the Company should confirm through a copy of Board Resolution attested by Company Secretary that the concerned person is appointed as Manager as defined under the Companies Act, 1956 for the purpose in question. The Company Secretary shall also certify that the Company does not have a Managing Director or Chief Executive Officer.
6. In case there is no such company please fill in the column "Name of the Company" as Nil and under column of Relationship as "Not Applicable".

--

**4.27 Details of the generation source and the primary fuel**

(Note: In case of Bidder being a Trading Licensee, details in this format is to be furnished by the Bidder in relation to the supplier of power with whom the power purchase agreement has been executed by the Trading Licensee)

**(A) Details of generation source**

Sl. No	Particulars	Details (to be furnished by the Bidder)			
15.	Location of power station (Specify place, district and state)				
16.	No. of existing/ proposed units and installed capacity of each unit (in MW)	<b>Existing</b>			
		<b>Sl. No.</b>	<b>No. of Units</b>	<b>Installed Capacity</b>	<b>COD</b>
		1.			
		2.			
		.....			
		<b>Proposed</b>			
		<b>Sl. No.</b>	<b>No. of Units</b>	<b>Installed Capacity</b>	<b>Expected COD</b>
		1.			
		2.			
		.....			
17.	Primary Fuel				
18.	Dates of last major R&M (unit-wise)	<b>Applicable for existing units</b> S No.    Date 1. 2. ...			
19.	Duration of Fuel Supply Agreement(s) (FSA)				
20.	Quantum of power contracted with other purchasers, if any (in MW)				
21.	Details of surplus capacity (in MW)				

**(B) Details of primary fuel** (The following format is not applicable for Hydel Plants)

S. No	Particulars	Details (to be furnished by the Bidder)
1	<b>Primary fuel</b> (Insert as applicable: “Domestic coal/ Imported coal/ Domestic (pipeline) gas/ Imported gas (R-LNG)”)	
2	<b>Fuel source</b> (Insert as applicable: “Coal India Limited (CIL) coal linkage/ domestic captive coal mine/ imported coal/ domestic (pipeline) gas/ imported gas (R-LNG)”)	
3	<b>Fuel grade</b> (Applicable only in case of coal)	
4	Name of the CIL subsidiary from which coal is proposed to be sourced or name	

--

	and location of the captive coal mine (as applicable)	
6	<p>Bidder to insert the applicable price mechanism, based on whether the primary fuel is covered under:</p> <ol style="list-style-type: none"> <li>1. Administered Price Mechanism ("APM"); or</li> <li>2. Controlled and notified by an independent Regulator; or</li> <li>3. Controlled and notified by the Government of India or Government of India Instrumentality.</li> </ol> <p>(Applicable only for gas)</p>	

**Signature:**

**Name:**

**Designation:**

**Date:**

**Place:**

.....  
*Signature of Chief Executive Officer / Managing Director / Manager*

**Notes:**

3. Managing Director/ Chief Executive Officer, being a full time director in the Board of the Bidding Company/ Manager.
4. In case of Manager, the Company should confirm through a copy of Board Resolution attested by Company Secretary that the concerned person is appointed as Manager as appointed under Section 269 of the Companies Act, 1956 for the purpose in question. The Company Secretary shall also certify that the Company does not have a Managing Director or Chief Executive Officer. In case of the Bidding Company/Member being a foreign company, the same shall be signed by a person of equivalent position.

--

**4.28 Format for certificate of relationship of Parent Company or Affiliate with the Bidding Company or with the Member of the Bidding Consortium, including the Lead Member.**

To,

**Chief Engineer (RPPC)  
Rajasthan Rajya Vidyut Prasaran Nigam Limited  
Vidyut Bhawan, Janpath, Jyoti Nagar  
Jaipur-302005 (Rajasthan)**

Dear Sir,

**Sub: Bid for procurement of power on long term basis through tariff based competitive bidding process in response to the RFP dated 25.02.09**

We hereby certify that M/s....., M/s....., M/s ..... are the Affiliate(s) / Parent Company of the Bidding Company/Member of the Bidding Consortium as per the definition of Affiliate/Parent Company as provided in this RFP and based on details of equity holding as on seven (7) days prior to the Bid Deadline.

The details of equity holding of the Bidding Company/Member of the Consortium in the Affiliate/Parent Company or vice versa as on seven (7) days prior to the Bid Deadline are given as below:

<b>Name of Bidding Company / Member of Bidding Consortium</b>	<b>Name of the Affiliate of the Bidding Company / Member of the Bidding Consortium*</b>	<b>Name of the Parent Company of the Bidding Company / Member of Bidding Consortium</b>	<b>Name of the company having common control on the Affiliate and the Bidding Company / Member of Bidding Consortium</b>

\* Bidding Company / Member of Bidding Consortium to hold at least twenty six percent (26%) in such Affiliate as on seven (7) days prior to Bid Deadline

.....  
**(Insert Name and Signature of Statutory Auditor of the Bidder or practising Company Secretary)**

--

# **SECTION - 5**

## **FORMATS FOR BIDDER'S INFORMATION AND REFERENCE**



## SECTION 5

### 10. FORMATS FOR BIDDER'S INFORMATION AND REFERENCE

The following formats and enclosures are provided for Bidder's information and reference and also to provide assistance in preparation of its Bid.

- xiii. List of Procurers – 5.1
- xiv. Procurer(s) information – 5.2
- xv. Letter of consent from all the participating Procurers – 5.3
- xvi. Format of the Joint Deed Agreement to be executed among the participating Procurers – 5.4
- xvii. RFP Documents -5.5
- xviii. Format for clarifications/ amendments on the RFP/RFP Documents – 5.6
- xix. Format for Contract Performance Guarantee – 5.7
- xx. List of Banks – 5.8
- xxi. Illustration for Bid evaluation and computation of Levelized Tariff – 5.9
- xxii. Transmission charges matrix – 5.10
- xxiii. Transmission loss matrix – 5.11
- xxiv. Format for illustration of Affiliates – 5.12

5.13 List of Procurers [Insert if applicable]

Sl. No.	Name of Procurer(s)	Address of the Procurer(s)	Power Procurement by the Procurer (MW)
1	<b>Jaipur Vidyut Vitran Nigam Limited (JVVNL)</b>	Vidyut Bhawan, Janpath, Jyoti Nagar, <b>Jaipur (Rajasthan)</b>	360
2	<b>Ajmer Vidyut Vitran Nigam Limited (AVVNL)</b>	Old Power House, Hathi Bhata, Jaipur Road, <b>Ajmer (Rajasthan)</b>	360
3	<b>Jodhpur Vidyut Vitran Nigam Limited (JdVVNL)</b>	New Power House, Industrial Area, <b>Jodhpur (Rajasthan)</b>	280

--

**5.14 Procurer(s) Information**

**[Procurer/Authorized Representative to enclose the following]**

- 5) Last three available annual audited accounts
- 6) Aggregate Technical and Commercial Losses for last three years as available
- 7) Details regarding existing tariff structure, consumer base
- 8) Details relating to escrow cover of the Procurer(s) as shown below:

Total Escrow Cover already granted as on seven (7) days prior to Bid Deadline	Details
4. ....	.....
5. ....	.....
6. ....	.....

--



**5.15 Letter of Consent from the Procurer(s)** [Insert if applicable]

Enclosures: Letter of consent from the Procurer(s) stating that the entire bid document has been reviewed and each key element of the bid document is agreed to.

--

**5.16 Format of the Joint Deed Agreement among the participating Procurers**

**(To be on non-judicial stamp paper of appropriate value as per Stamp Act relevant to place of execution.)**

Form of Joint Deed Agreement between **Jaipur Vidyut Vitran Nigam Limited, Ajmer Vidyut Vitran Nigam Limited and Jodhpur Vidyut Vitran Nigam Limited** for procurement of power on a long-term basis

**THIS Joint Deed Agreement** executed on this..... day of ..... Two thousand..... between M/s **Jaipur Vidyut Vitran Nigam Limited**, a company incorporated under the laws of India and a Distribution Licensee under the Electricity Act 2003 and having its Registered Office at Vidyut Bhawan, Janpath, Jyoti Nagar, **Jaipur (Rajasthan)** (hereinafter called the "Procurer-1", which expression shall include its successors, executors and permitted assigns), M/s **Ajmer Vidyut Vitran Nigam Limited**, a Company incorporated under the laws of India and a Distribution Licensee under the Electricity Act 2003. and having its Registered Office at Old Power House, Hathi Bhata, Jaipur Road, **Ajmer (Rajasthan)** (hereinafter called the "Procurer-2", which expression shall include its successors, executors and permitted assigns) and M/s **Jodhpur Vidyut Vitran Nigam Limited**, a Company incorporated under the laws of India and a Distribution Licensee under the Electricity Act 2003 and having its Registered Office at New Power House, Industrial Area, **Jodhpur (Rajasthan)** (hereinafter called the "Procurer-3", which expression shall include its successors, executors and permitted assigns), for the purpose of procurement of power on long term basis.

WHEREAS, each Procurer individually referred as the Procurer and all the Procurers collectively referred to as the Procurers in this agreement;

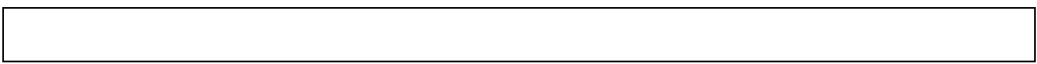
WHEREAS, **Rajasthan Rajya Vidyut Prasaran Nigam Limited** the Authorized Representative is inviting Bids for procurement of power as per RFP dated 25.02.09.

NOW THEREFORE, THIS INDENTURE WITNESSTH AS UNDER :

In consideration of the above premises and agreements all the Procurers in this consortium do hereby mutually agree as follows:

Body of the Joint Deed Agreement shall incorporate clauses pertaining to following key principles:

- 9. Willingness to procure power through the combined Bid process.
- 10. The share of power to be procured by each Procurer.
- 11. Agreement on the Lead Procurer and the task to be performed by the Lead Procurer.
- 12. Responsibility of each Procurer.
- 13. Methodology of approval of the bid documents including the evaluation criteria, PPA provisions, payment security mechanism, amendment to the bid document and methodology for negotiation with the Successful Bidders by the Procurers.



14. Undertaking that the tariff of the Successful Bidder based on the accepted Bidding process shall be binding on each Procurer.
15. Undertaking to provide agreed Payment Security Mechanism as provided in the PPA by each individual Distribution Licensee corresponding to their share of power.
16. Undertaking that the Successful Bidder in the event of payment default by the defaulting procurer shall not be debarred from sale of power to a third party of its proportionate share as provided in the PPA.

This Joint Deed Agreement

- (i) has been duly executed and delivered on behalf of each Procurer hereto and constitutes the legal, valid, binding and enforceable obligation of each such Procurer,
- (j) sets forth the entire understanding of the Procurer hereto with respect to the subject matter hereof;

IN WITNESS WHEREOF, the parties to the joint Deed agreement have, through their authorized representatives, executed these presents and affixed Common Seals of their respective companies on the Day, Month and Year first mentioned above.

**For M/s Jaipur Vidyut Vitran Nigam Limited**

(Procurer 1)

1. Common Seal of M/s.....  
 .....  
 have been affixed in my/  
 our presence pursuant to  
 Board/Board of Directors Resolution      Name.....  
 dated      Designation.....  
 Signature.....

**For M/s Ajmer Vidyut Vitran Nigam Limited**

(Procurer 2)

2. Common Seal of M/s.....  
 .....  
 have been affixed in my/  
 our presence pursuant to  
 Board/Board of Directors Resolution      Name.....  
 dated      Designation.....  
 Signature.....

**For M/s Jodhpur Vidyut Vitran Nigam Limited**

(Procurer 3)

3. Common Seal of M/s.....  
.....  
have been affixed in my/  
our presence pursuant to  
Board/Board of Directors Resolution  
dated  
Signature.....

(Signature of the authorized representative)

Name.....

Designation.....



**5.17 Formats for RFP Documents**

ENCLOSURE 1:- Power Purchase Agreement (PPA)

ENCLOSURE 2:- Default Escrow Agreement

ENCLOSURE 3:- Agreement to Hypothecate cum Deed of Hypothecation



**5.18 Format for Clarifications/ Amendments on the RFP/RFP Documents**

<b>Sl. No.</b>	<b>Name of the Document</b>	<b>Clause No. and Existing provision</b>	<b>Clarification required</b>	<b>Suggested text for the amendment</b>	<b>Rationale for the Clarification or Amendment</b>

**This format shall be used for submission of request for clarifications/amendments on the draft RFP Documents as per the provisions of Clause 2.2.6.1 of this RFP.**

.....  
*(Signature and stamp of Chief Executive/Company Secretary of Bidder)*

*Name:*

*Date:*

*Place:*

**Signature of Authorized Signatory of the Bidder:**

**Date:**

**(Please also affix Bidder's stamp)**

--

**5.19 Format for Contract Performance Guarantee**

**(To be on non-judicial stamp paper of appropriate value as per Stamp Act relevant to place of execution. Foreign entities submitting Bids are required to follow the applicable law in their country. To be provided separately in the name of each of the Procurer(s), in proportion to their Contracted Capacity)**

In consideration of the .....[Insert name of the Successful Bidder with address] agreeing to undertake the obligations under the PPA and the other RFP Documents and ..... [Insert name of Procurer(s)](herein after referred to as Procurer(s)), agreeing to execute the RFP Documents with the Successful Bidder for **procurement of power on long term basis through tariff based competitive bidding process for meeting the requirements of the Procurer(s)**, the ..... [Insert name and address of the bank issuing the guarantee and address of the head office] (hereinafter referred to as “Guarantor Bank”) hereby agrees unequivocally, irrevocably and unconditionally to pay to the Procurer(s) at .....[Insert address of Procurer(s)] forthwith on demand in writing from the Procurer(s) *or* any Officer authorized by it in this behalf, any amount up to and not exceeding Rupees ..... only [Insert the amount of the bank guarantee computed on the basis of thirty (30) lakhs/MW with respect to the Contracted Capacity of .....[Insert as applicable: “the Procurer”/ each Procurer”]] as per the terms of PPA] on behalf of M/s. .... [Insert name of the Successful Bidder].

This guarantee shall be valid and binding on the Guarantor Bank up to and including .....[Insert date of validity of CPG as per Clause 2.13 of the RFP] and shall in no event not be terminable by notice or any change in the constitution of the Bank or the term of the PPA or by any other reasons whatsoever and our liability hereunder shall not be impaired or discharged by any extension of time or variations or alternations made, given, or agreed with or without our knowledge or consent, by or between parties to the respective agreement.

Our liability under this Guarantee is restricted to Rs. .... (Rs. .... only). Our Guarantee shall remain in force until ..... [Insert the date of validity of the Guarantee as per Clause 2.13 of the RFP]. The Procurer(s) shall be entitled to invoke this Guarantee up to thirty (30) days of the last date of the validity of this Guarantee by issuance of a written demand to invoke this guarantee.

The Guarantor Bank hereby expressly agrees that it shall not require any proof in addition to the written demand from the Procurer(s), made in any format, raised at the above mentioned address of the Guarantor Bank, in order to make the said payment to the Procurer(s) .

The Guarantor Bank shall make payment hereunder on first demand without restriction or conditions and notwithstanding any objection by, ..... [Insert name of the Successful Bidder] and/or any other person. The Guarantor Bank shall not require the Procurer(s) to justify the invocation of this BANK GUARANTEE, nor shall the Guarantor Bank have any recourse against the Procurer(s) in respect of any payment made hereunder.

This BANK GUARANTEE shall be interpreted in accordance with the laws of India and the courts at ..... [Location to be inserted by Procurer/Authorized Representative] shall have exclusive jurisdiction.

--

The Guarantor Bank represents that this BANK GUARANTEE has been established in such form and with such content that it is fully enforceable in accordance with its terms as against the Guarantor Bank in the manner provided herein.

This BANK GUARANTEE shall not be affected in any manner by reason of merger, amalgamation, restructuring, liquidation, winding up, dissolution or any other change in the constitution of the Guarantor Bank.

This BANK GUARANTEE shall be a primary obligation of the Guarantor Bank and accordingly the Procurer(s) shall not be obliged before enforcing this BANK GUARANTEE to take any action in any court or arbitral proceedings against the Successful Bidder/Seller, to make any claim against or any demand on the Successful Bidder/Seller or to give any notice to the Successful Bidder/Seller or to enforce any security held by the Procurer(s) or to exercise, levy or enforce any distress, diligence or other process against the Successful Bidder/Seller.

The Guarantor Bank acknowledges that this BANK GUARANTEE is not personal to the Procurer(s) and may be assigned, in whole or in part, (whether absolutely or by way of security) by the Procurer(s) to any entity to whom it is entitled to assign its rights and obligations under the PPA.

The Guarantor Bank hereby agrees and acknowledges that the Procurer(s) shall have a right to invoke this Bank Guarantee either in part or in full, as it may deem fit.

Notwithstanding anything contained hereinabove, our liability under this Guarantee is restricted to Rs. .... crores (Rs. .... crores only) and it shall remain in force until .....[Date to be inserted on the basis of Article .....of PPA], with an additional claim period of thirty (30) days thereafter. This BANK GUARANTEE shall be extended from time to time for such period, as may be desired by ..... [Insert name of the Successful Bidder/Seller]. We are liable to pay the guaranteed amount or any part thereof under this Bank Guarantee only if the Procurer(s) serves upon us a written claim or demand.

In witness whereof the Bank, through its authorized officer, has set its hand and stamp on this ..... day of ..... at .....

**Witness:**

- 1. ....  
Name and Address.
- 2. ....  
Name and Address

**Signature**  
Name:  
Designation with Bank Stamp

Attorney as per power of attorney No. ....

For:  
..... [Insert Name of the Bank]



Banker's Stamp and Full Address:

Dated this ..... day of ..... 20.....

**Notes:**

- ii. The Stamp Paper should be in the name of the Executing Bank. This date shall be one (1) month after the Bid Validity.

--

## 5.20 List of Banks

### Scheduled Commercial Banks

#### SBI and Associates

36. State Bank of India
37. State Bank of Bikaner and Jaipur
38. State Bank of Hyderabad
39. State Bank of Indore
40. State Bank of Mysore
41. State Bank of Patiala
42. State Bank of Saurashtra
43. State Bank of Travancore

#### Nationalised Banks

44. Allahabad Bank
45. Andhra Bank
46. Bank of India
47. Bank of Maharashtra
48. Bank of Baroda
49. Canara Bank
50. Central Bank of India
51. Corporation Bank
52. Dena Bank
53. Indian Bank
54. Indian Overseas Bank
55. Oriental Bank of Commerce
56. Punjab National Bank
57. Punjab and Sind Bank
58. Syndicate Bank
59. Union Bank of India
60. United Bank of India
61. UCO Bank
62. Vijaya Bank



## **2. Foreign Banks**

- 30 BNP Paribas
- 31 Citi Bank N.A.
- 32 Deutsche Bank A.G.
- 33 The Hongkong and Shanghai Banking Corporation Ltd.
- 34 Standard Chartered Bank
- 35 ABN Amro Bank N.V.
- 36 UFJ Bank Ltd.
- 37 Sumitomo Mitsui Banking Corporation
- 38 Societe Generale
- 39 Barclays Bank
- 40 Bank of Novascotia

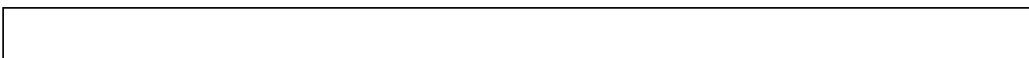
## **3. Scheduled Private Banks**

- 41 ING Vysya Bank Ltd.
- 42 ICICI Bank Ltd.
- 43 HDFC Bank Ltd.
- 44 IDBI Bank Ltd
- 45 Axis Bank
- 46 Kotak Mahindra Bank
- 47 IndusInd Bank

[The above list is indicative and the Procurer/Authorized Representative is authorized to modify the aforesaid list of Banks as deemed fit. Such modification shall not be construed as a change in standard bidding documents.]

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**5.21 Illustration for Bid Evaluation and Computation of Levelized Tariff**



**5.22 Transmission Charges Matrix**

**[To be provided by CERC and to be inserted by Procurer/Authorized Representative]**

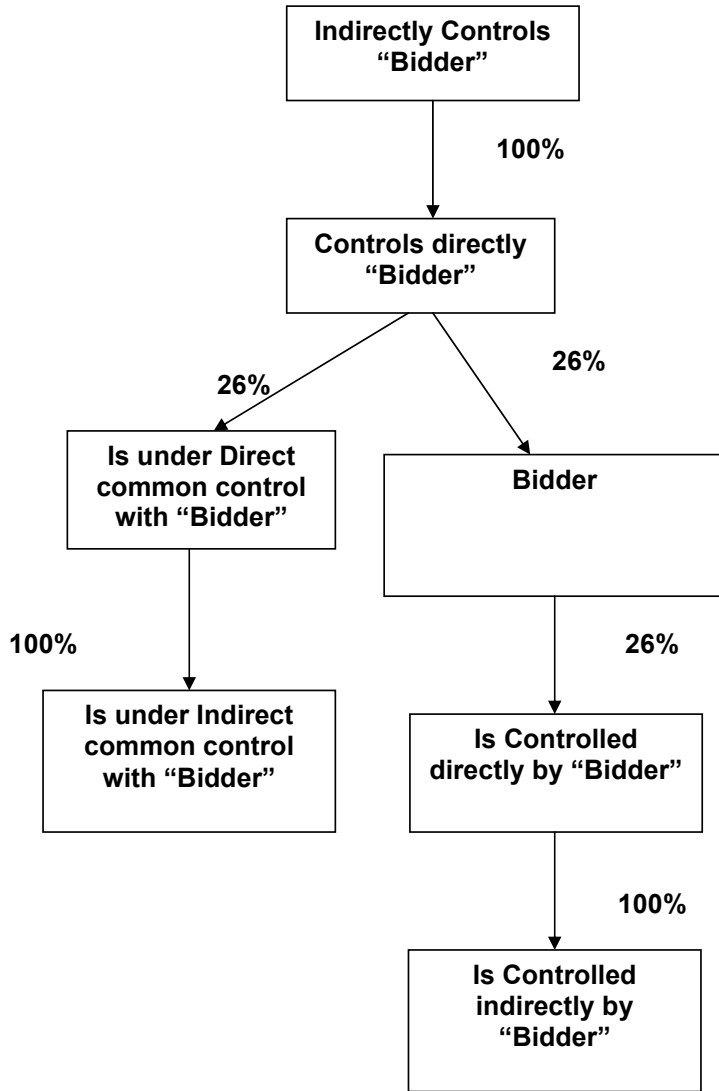
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**5.23 Transmission Loss Matrix**

**[To be provided by CERC and to be inserted by Procurer/Authorized Representative]**

--

5.24 Format for illustration of Affiliates



[Empty rectangular box]

POWER PURCHASE AGREEMENT

FOR

PROCUREMENT OF POWER

FOR

'LONG TERM'

Under Case – 1 Bidding Procedure

THROUGH

TARIFF BASED COMPETITIVE BIDDING PROCESS

(As per Guidelines issued by the Government of India for Determination of Tariff by Bidding Process for Procurement of Power by Distribution Licensees)

FOR MEETING THE SEASONAL LOAD REQUIREMENTS

Amongst

*[Jaipur Vidyut Vitran Nigam Ltd. (JVVNL)]*

("Procurer 1")

and

*[Ajmer Vidyut Vitran Nigam Ltd. (AVVNL)]*

("Procurer 2")

and

*[[Jodhpur Vidyut Vitran Nigam Ltd. (JdVVNL)]*

("Procurer 3")

and

*[Insert Name of the Seller]*

("Seller")



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THIS AGREEMENT<sup>11</sup> IS MADE ON THE [ ] DAY OF [ ] 20[ ]

**Between**

<sup>11</sup> In case the Successful Bidder is supplying power from more than one generation source, then separate PPAs need to be executed for each such generation source;

- (1) [Jaipur Vidyut Vitran Nigam Ltd. (JVVNL)], (the “Procurer 1”)
- (2) [Ajmer Vidyut Vitran Nigam Ltd. (AVVNL)], (the “Procurer 2”)
- (3) [Jodhpur Vidyut Vitran Nigam Ltd. (JdVVNL)], (the “Procurer 3”)

and

**[Insert Name of the Seller], (the “Seller”)**<sup>12</sup>

**[The “Procurer1”, “Procurer 2”, and “Procurer 3” are (hereinafter collectively referred to as the “Procurers” and individually as a “Procurer”), and each of the “Procurer” and “the “Seller” are individually referred as “Party” and collectively to as the “Parties”)**

**Whereas:**

- J. In accordance with the Competitive Bidding Guidelines (as defined hereunder), the Authorized Representative, had initiated a competitive bidding process through issue of RFP for procurement of power for “long” term under Case-1 bidding procedure for meeting the Procurers’ “seasonal load” power requirements.
- K. Pursuant to the said bidding process, ..... [Insert name of Successful Bidder] has been selected by the Authorized Representative, as the Seller for sale and supply of electricity in bulk to the Procurers, for the Aggregate Contracted Capacity (as defined hereunder) of ..... [To be filled in based on Selected Bid] MW, in accordance with the terms of this Agreement.
- L. The ..... [Insert as applicable “Successful Bidder on behalf of the Seller” or “Seller”] has provided to the Procurers, Contract Performance Guarantees as per format specified in Schedule 9 of this Agreement.
- M. [Insert if applicable] The Successful Bidder has incorporated the Project Company by the name, ..... [Insert Name of the Project Company] to execute this Agreement and shall be construed as

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<sup>12</sup> In case of the Successful Bidder being a Bidding Consortium, the Seller shall necessarily be the Project Company and shall sign the Power Purchase Agreement. In case the Successful Bidder is a Bidding Company, and incorporates a separate Project Company, such Project Company would be the Seller and shall sign the Power Purchase Agreement. If the Bidding Company does not incorporate a Project Company, such Successful Bidder being the Bidding Company shall be the Seller and shall sign the Power Purchase Agreement;

Seller for the purposes of this Agreement and to undertake all the responsibilities and obligations of the Seller.

- N. The Parties hereby agree to execute this Power Purchase Agreement setting out the terms and conditions for the sale of power up to the Aggregate Contracted Capacity by the Seller to the Procurers.
- O. The Procurers agree, on the terms and subject to the conditions of this Agreement, to procure power up to the Aggregate Contracted Capacity and pay the Seller the Tariff as determined in accordance with the terms of this Agreement.
- P. The Procurers have further agreed to make an application to the Appropriate Commission for the adoption of the Tariff under Section 63 of the Electricity Act, 2003.
- Q. All the other RFP Documents have been executed by the Procurers and the Seller simultaneously with the signing of this Agreement.
- R. *[Insert in case of generation source of the Successful Bidder being in the same state of the Procurer(s) or the Successful Bidder intends to connect the generation source to the STU Interface through a dedicated transmission line]* The Procurers and the Successful Bidder/Project Company have mutually agreed on the Delivery Point(s) for supplying power to the Procurers and have incorporated the same in Schedule 1 of this Agreement.

Now therefore, in consideration of the premises and mutual agreements, covenants and conditions set forth herein, it is hereby agreed by and between the Parties as follows:

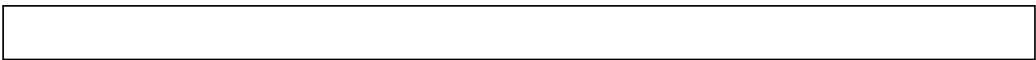
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2. ARTICLE 1: DEFINITIONS AND INTERPRETATION

**15.25** Definitions

The terms used in this Agreement, unless as defined below or repugnant to the context, shall have the same meaning as assigned to them by the Electricity Act, 2003 and the rules or regulations framed there under, including those issued/ framed by Appropriate Commission (as defined hereunder), as amended or re-enacted from time to time.

“Act” or “Electricity Act, 2003”	<u>shall mean the</u> Electricity Act, 2003 and any rules, amendments, regulation, notifications, guidelines or policies issued there under from time to time;
“Affiliate”	shall mean a company that either directly or indirectly <ol style="list-style-type: none"><li>controls or</li><li>is controlled by or</li><li>is under common control with</li></ol> a Bidding Company (in the case of a single company) or a Member (in the case of a Consortium) and “control” means ownership by one company of at least twenty six percent (26%) of the voting rights of the other company;
“Aggregate Contracted Capacity”	with respect to the Seller, shall mean [Insert Capacity in MW], the aggregate capacity contracted with the Procurers for supply at the Interconnection Point from the Power Station’s Net Capacity;
“Agreement” or “Power Purchase Agreement” or “PPA”	shall mean this Power Purchase Agreement including its <u>recitals and</u> Schedules, amended or modified from time to time in accordance with the terms hereof;
“Appropriate Commission”	shall mean the the CERC, or the SERC or the Joint Commission referred to in Section 83 of the Electricity Act 2003, as the case may be;
“Assessed Capacity”	in relation to the Power Station, shall mean the result of the most recent capacity assessment carried out by the Control Centre or [ <i>Insert “the Seller” if Seller is NOT a Trading Licensee, or “as ensured by the Seller” if Seller is a Trading Licensee</i> ] in accordance with Article 5.5 of this Agreement;



<u>“Authorized Representative”</u>	<u>shall mean Rajasthan Rajya Vidyut Prasaran Nigam Ltd, the body corporate authorized by the Procurers to carry out the bidding process for the selection of the Successful Bidder on their behalf;</u>
“Availability Based Tariff” or “ABT”	<u>shall mean all the regulations contained in the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2004, as amended or revised from time to time, to the extent applied as per the terms of this Agreement;</u>
“Availability Factor” or “Availability”	<u>shall have the meaning ascribed thereto in ABT (provided that in place of Installed capacity and Normative auxiliary consumption it shall be Aggregate Contracted Capacity);</u>
“Available Capacity”	<u>shall have the meaning ascribed thereto in ABT;</u>
“Bid”	<u>shall mean Non-Financial Bid and Financial Bid submitted by the Successful Bidder, in response to the RFP, in accordance with the terms and conditions of the RFP;</u>
“Bid Deadline”	<u>shall mean the last date and time for submission of the Bid in response to the RFP;</u>
“Bidding Company”	<u>shall refer to such</u> single company that has submitted the Bid in accordance with the provisions of the RFP;
“Bidding Consortium” or “Consortium”	<u>shall mean</u> a group of companies that has collectively submitted the Bid;
“Bidding Guidelines” or “Competitive Bidding Guidelines”	<u>shall mean the “Guidelines for Determination of Tariff by Bidding Process for Procurement of Power by Distribution Licensees”, issued by Ministry of Power, Government of India, under Section 63 of the Electricity Act, 2003 on January 19, 2005 and as amended from time to time till the Bid Deadline;</u>
“Bill Dispute Notice”	shall mean the notice issued by a Party raising a <u>Dispute</u> regarding a Monthly Bill or a Supplementary Bill issued by the other Party;
“Business Day”	shall mean <u>with respect to Seller and Procurers,</u> a day other than Sunday or a statutory holiday, on which the banks remain open for business in <u>the State of Rajasthan;</u>
“Capacity Charge” or “Capacity Charges”	shall have meaning <u>ascribed thereto</u> in Schedule 4;
[Insert this definition in case	<u>shall mean the lower of the following:</u> (a) <u>actual capital cost of the Power Station on a relevant</u>

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Seller is not a Trading Licensee]“Capital Cost”

date which shall not be later than the Delivery Date, as certified by the auditors appointed jointly by the Seller and Procurers (jointly); or  
(b) total cost of the Power Station as set forth in the Financing Agreements.

Provided that Capital Cost shall always exclude cost overruns arising due to a Seller Event of Default, or costs due to events for which compensation has been received by Seller from the Procurers or Insurers or third parties;

Provided further that the Capital Cost in relation to an unit shall be the total cost of the Power Station allocated in proportion to the Aggregate Contracted Capacity;

[Insert this definition in case Seller is not a Trading Licensee]“Capital Structure Schedule”

shall mean sources of finance used to finance the Capital Cost of the Power Station as provided in the Financing Agreements;

"Central Transmission Utility" or "CTU"

shall mean the utility notified by the Central Government under Section-38 of the Electricity Act 2003;

"CERC"

shall mean the Central Electricity Regulatory Commission of India, constituted under sub – section (1) of Section 76 of the Electricity Act, 2003, or its successors;

"Change in Law"

shall have the meaning ascribed thereto in Article 10.1.1 of this Agreement;

"Competent Court of Law"

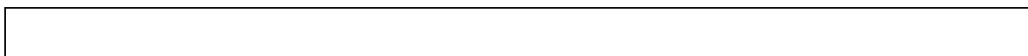
shall mean any court or tribunal or any similar judicial or quasi-judicial body in India that has jurisdiction to adjudicate upon issues relating to this Agreement;

"Consents, Clearances and Permits"

shall mean all authorizations, licenses, approvals, registrations, permits, waivers, privileges, acknowledgements, agreements, or concessions required to be obtained from or provided by any concerned authority for the purpose of setting up of the generation facilities and/ or supply of power;

"Consultation Period"

shall mean the period of ninety (90) days or such other longer period as the Parties may agree, commencing from the date of issuance of a Seller Preliminary Default Notice or a Procurer Preliminary Default Notice as provided in Article 11 of this Agreement, for consultation between the



Parties to mitigate the consequence of the relevant event having regard to all the circumstances;

**“Contract Performance Guarantee”**

**shall mean the irrevocable unconditional bank guarantee, submitted or to be submitted by the Seller or the Successful Bidder on behalf of the Seller to the Procurers from a bank mentioned in Schedule 11 of this Agreement in the form attached hereto as Schedule 9, in accordance with the terms of this Agreement and RFP;**

**“Contract Year”**

shall mean the period commencing on the Effective Date (as defined hereunder) and ending on the immediately succeeding March 31 and thereafter each period of twelve (12) months commencing on April 1 and ending on March 31;

Provided that:

**(i) in the financial year in which the Scheduled Delivery Date would occur, the Contract Year shall end on the date immediately before the Scheduled Delivery Date and a new Contract Year shall commence once again from the Scheduled Delivery Date and end on the immediately succeeding March 31, and thereafter each period of twelve (12) months commencing on April 1 and ending on March 31, and**

**(ii) provided further that the last Contract Year of this Agreement shall end on the last day of the Term of this Agreement;**

**And further provided that for the purpose of payment, the Tariff shall be the Quoted Tariff for the applicable Contract Year as per Schedule 8 of this Agreement;**

**“Contracted Capacity”**

with respect to each Procurer, *shall mean the allocation of the Aggregate Contracted Capacity to each of the Procurers as provided in Schedule 1 hereof, subject to adjustment as per terms of this Agreement;*

**“Control Centre”**

shall mean the **RLDC and/or SLDC** or such other load control centre designated by the Procurer(s) from time to time **through** which the Procurers shall issue Dispatch Instructions to the **Seller for supply of power;**

**[Insert this definition in case Seller is not a Trading Licensee]“Debt**

shall mean the amounts which are due under the Financing Agreements by the Seller to the Lenders, expressed in Rupees (with all amounts denominated in currencies other than Rupees being converted to Rupees at the reference exchange rate, which is the selling rate in



**Service"** Rupees for the foreign currency on the relevant Day, as notified by the State Bank of India as its TT Rate at 12:00 noon of the date of Notice to Proceed);

**"Declared Capacity"** *shall mean the Power Station's Net Capacity at the relevant time at the Interconnection Point (expressed in MW) as declared by the Seller in accordance with the Grid Code and dispatching procedures as per the Availability Based Tariff;*

**"Delivery Date"** shall mean the date on which the Seller commences supply of the Aggregate Contracted Capacity to the Procurers;

**"Delivery Point"** shall mean the STU Interface(s) as specified in Schedule 1 of this Agreement;

**"Developer"** shall mean the owner of the Power Station from which the Seller shall supply the Aggregate Contracted Capacity to the Procurers;

*[Insert this definition in case the Seller is a Trading Licensee]*

**"Direct Non-Natural Force Majeure Event"** shall have the meaning ascribed thereto in Article 9.3 of this Agreement;

**"Dispatch Instruction"** shall mean any instruction issued by the Procurer(s) through the concerned SLDC / RLDC to the Seller, in accordance with applicable Grid Code and this Agreement;

**"Dispute"** shall mean any dispute or difference of any kind between a Procurer and the Seller or between the Procurers (jointly) and the Seller, in connection with or arising out of this Agreement including but not limited to any issue on the interpretation and scope of the terms of this Agreement as provided in Article 14 of this Agreement;

**"Due Date"** shall mean the thirtieth (30th) day after a Monthly Bill or a Supplementary Bill is received and duly acknowledged by the Procurers or, if such day is not a Business Day, the immediately succeeding Business Day, by which date such Monthly Bill or a Supplementary Bill is payable by such Procurers;

**"Effective Date"** shall have the meaning ascribed thereto in Article 2.1 of this Agreement;

**"Electricity Laws"** shall mean the Electricity Act, 2003 and the rules and regulations made thereunder from time to time along with amendments thereto and replacements thereof and any





other Law pertaining to electricity including regulations framed by the Appropriate Commission;

**“Energy Charge” or “Energy Charges”**

**shall have the meaning ascribed to this term under Schedule 4 of this Agreement;**

**“Event of Default”**

shall mean the events as defined in Article 11 of this Agreement;

**“Expiry Date”**

shall mean the date which is the twenty fifth (25th) anniversary of the Delivery Date or such extended period as mutually agreed upon by both Parties;

**“Financial Closure”**

**shall mean the execution of all the Financing Agreements required for the Power Station and fulfillment of conditions precedents and waiver, if any, of any of the conditions precedent for the initial draw down of funds there under;**

***[Insert this definition in case Seller is not a Trading Licensee]***

**“Financing Agreements”**

**shall mean** the agreements pursuant to which the Seller has sought financing for the Power Station including the loan agreements, security documents, notes, indentures, security agreements, letters of credit and other documents, as may be amended, modified, or replaced from time to time, but without in anyway increasing the liabilities of the Procurers;

**“Force Majeure” or “Force Majeure Event”**

**shall have the meaning ascribed thereto in Article 9.3 of this Agreement;**

**“Fuel”**

shall mean the primary fuel used to generate electricity **namely ..... [Insert name of the fuel as applicable, namely domestic coal, imported coal, domestic (pipeline) gas, or imported gas (RLNG)];**

**“Fuel Supply Agreement(s)” [this definition shall be deleted for Sellers who have hydro projects or captive coal mine based projects as generation source]**

shall mean the **agreement(s)** entered into between the ..... ***[Insert “Seller” if Seller is NOT a Trading Licensee, or “Developer” if Seller is a Trading Licensee]*** and the fuel supplier for the purchase, **transportation** and handling of the **Fuel**, required for the operation of the **Power Station**.

In case the transportation of the **Fuel** is not the responsibility of the fuel supplier, the Fuel Supply Agreement shall also include the separate agreement between the ..... ***[Insert “Seller” if Seller is NOT a Trading Licensee, or “Developer” if Seller is a Trading Licensee]*** and the fuel transporter for the transportation of **Fuel** in addition to the agreement between the ..... ***[Insert “Seller” if Seller is NOT a Trading Licensee, or “Developer” if Seller is a Trading Licensee]***



and the fuel supplier for the supply of the Fuel;

**"Grid Code" /  
"IEGC" or "State  
Grid Code"**

shall mean the Grid Code specified by the Central Commission under Clause (h) of Sub-section (1) of Section 79 of the Electricity Act and/or the State Grid Code as specified by the concerned State Commission, referred under Clause (h) of Sub-section (1) of Section 86 of the Electricity Act 2003, as applicable;

**"Indian  
Governmental  
Instrumentality"**

shall mean the Government of India, Governments of state(s) of Rajasthan, -----[Insert the name(s) of the state(s) in India, where the, the Seller and the Power Station are located] and any ministry, department, board, authority, agency, corporation, commission under the direct or indirect control of Government of India or any of the above state Government(s) or both, any political subdivision of any of them including any court or Appropriate Commission(s) or tribunal or judicial or quasi-judicial body in India but excluding the Seller and the Procurers;

**"Indirect Non-  
Natural Force  
Majeure Event"**

shall have the meaning ascribed thereto in Article 9.3 of this Agreement;

**"Injection Point"**

shall mean the ..... [Insert Injection Point] as specified by the Successful Bidder in Format 4.10 of the Selected Bid (Schedule 10 of this Agreement);

**"Installed Capacity"**

19.1 shall mean the sum of nameplate capacities of the units of the Power Station, confirmed by the respective performance tests;

**"Insurances"**

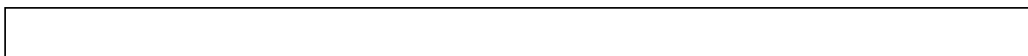
19.2 shall mean the insurance cover to be obtained and maintained by the [Insert "Seller" if Seller is NOT a Trading Licensee, or "Developer" if Seller is a Trading Licensee] in accordance with Article 7 of this Agreement;

**"Interconnection  
Facilities"**

19.3 shall mean the facilities on the Procurers' side of the Delivery Point for receiving and metering the electrical output in accordance with this Agreement and which shall include, without limitation, all other transmission lines and associated equipments, transformers, relay and switching equipment and protective devices, safety equipment and, subject to Article 6, the Metering System required for supply of power as per the terms of this Agreement;

**"Interconnection  
Point"**

19.4 shall mean the point where the power from the Power Station switchyard bus of the Seller is injected into the interstate/intrastate transmission system (including the dedicated transmission line connecting the Power Station with the interstate/intrastate transmission system);



**“Invoice” or “Bill”** shall mean either a Monthly Invoice, or a Supplementary Invoice by any of the Parties;

**“Late Payment Surcharge”** shall have the meaning ascribed thereto in Article 8.3.5 of this Agreement;

**“Law”** shall mean in relation to this Agreement, all laws including Electricity Laws in force in India and any statute, ordinance, regulation, notification or code, rule, or any interpretation of any of them by an Indian Governmental Instrumentality and having force of law and shall further include without limitation all applicable rules, regulations, orders, notifications by an Indian Governmental Instrumentality pursuant to or under any of them and shall include without limitation all rules, regulations, decisions and orders of the Appropriate Commission;

**“Lead Member”** shall mean ..... [Insert name of company], which company holds equity stake in the Seller in accordance with Article 15.2.2 of this Agreement and so designated by other Member(s) of the Bidding Consortium in accordance with the consortium agreement as specified in the RFP;

**“Lead Procurer”** shall have the meaning ascribed thereto in Article 15.1;

**[Insert this definition in case Seller is not a Trading Licensee]**  
**“Lender(s)”**

*shall mean the banks, other financial institutions, multilateral agencies, RBI registered non banking financial companies, mutual funds and agents or trustees of debenture/ bond holders, including their successors and assignees, who have agreed as on or before commencement of supply of power from the Power Station to provide the Seller with the debt financing described in the Capital Structure Schedule, and any successor banks or financial institutions to whom their interests under the Financing Agreements may be transferred or assigned:*

*Provided that, such assignment or transfer shall not relieve the Seller of its obligations to the Procurers under this Agreement in any manner and does not lead to an increase in the liability of the Procurers at any given point of time;*

*[Insert this definition in case Seller is not a Trading Licensee]*  
*shall mean the person notified by the Lenders in writing as being the representative of the Lenders and such person may from time to time be replaced by the Lenders pursuant to the Financing Agreements by written notice to the Seller ;*



“Lender  
's  
Repre  
ntative”

“Letter of Credit” or  
“L/C”

shall have the meaning ascribed thereto in Article 8.4.1 of this Agreement;

“Letter of Intent” or  
“LOI”

shall mean the letter issued by the Authorized Representative to the Successful Bidder for supply of power pursuant to the RFP;

[Insert in case of  
multiple Procurers]  
“Majority  
Procurers”

shall have the meaning ascribed thereto in Article 15.1.4 of this Agreement;

“Member” [Insert  
this definition only  
in case the Seller is  
a Bidding  
Consortium]

mean Member of the Bidding Consortium who is holding equity of the Seller as per the terms of the consortium agreement;

“Meters” or  
“Metering System”

shall mean meters used for accounting and billing of electricity in accordance with Central Electricity Authority (Installation and Operations of Meters) Regulations, 2006, Grid Code and ABT, as amended from time to time;

“Minimum Offtake  
Guarantee”  
(Applicable in case  
of linkage-based  
coal/ imported  
coal/domestic gas/  
imported LNG  
based projects)

shall mean guaranteed offtake of ..... percent (.....%) [Insert percent of offtake] of the Aggregate Contracted Capacity for the Procurer or all Procurers taken together, as the case may be, during a Contract Year<sup>13</sup>.

“Month”

shall mean a period of thirty (30) days from (and excluding) the date of the event, where applicable, else a calendar month;

“Monthly Bill” or  
“Monthly Invoice”

shall mean a monthly invoice comprising of Capacity Charges (applicable after Delivery Date) and Energy Charges (as applicable), including incentive and penalty, as per Schedule 4 hereof;

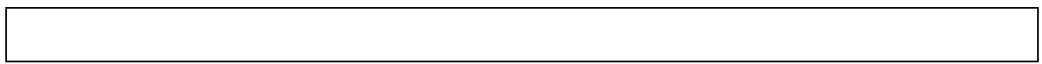
“Natural Force  
Majeure Event”

shall have the meaning ascribed thereto in Article 9.3 of this Agreement;

<sup>13</sup> To be decided by the Procurer but needs to be aligned with the prevalent CERC norms

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<b><u>“Non-Natural Force Majeure Event”</u></b>	shall have the meaning ascribed thereto in Article 9.3 <u>of this Agreement</u> ;
<b>“Normative Availability”</b>	shall mean eighty five percent <u>(85%)Availability of the Aggregate Contracted Capacity at the Interconnection Point on Contract Year</u> basis.
<b>“Notice to Proceed” or “NTP”</b> <i>[to be inserted only in case of long term procurement]</i>	<u>shall mean the date on which the [Insert “Seller” if Seller is NOT a Trading Licensee, or “Developer” if Seller is a Trading Licensee] shall fulfill the conditions as contained in Article 3.1.1 of this Agreement in accordance with the provisions of this Agreement;</u>
<b><u>“Operating Period”</u>;</b>	<u>shall mean the period commencing from the Delivery Date,</u> until the Expiry Date or date of earlier termination of this Agreement in accordance with Article 2 of this Agreement;
<b>“Parent Company” or “Parent”</b>	shall mean a company that holds at least twenty six percent (26%) of the paid-up equity capital directly or indirectly in the Seller or in the Member, as the case may be;
<b>“Party” and “Parties”</b>	shall have the meaning ascribed thereto in the recital to this Agreement;
<b>“Payment Mechanism”</b>	shall have the meaning ascribed thereto in Article 8.4 <u>of this Agreement</u> ;
<b>“Power Station”</b>	shall mean the .... <i>[Insert name of generation source specified by the Successful Bidder in its Bid]</i> power generation facility of installed capacity of ..... <i>[Insert capacity ]</i> MW, located at ..... <i>[Insert name of the place]</i> in .... <i>[Insert name of the District and State]</i> ; <u>This includes all units and auxiliaries such as associated Fuel handling, treatment or storage facilities; water supply, treatment or storage facilities; the ash disposal system including ash dyke [if applicable]; bay/s for transmission system in the switchyard, dam, intake, water conductor system [if applicable] , and all the other assets, buildings/structures, equipments, plant and machinery, facilities and related assets required for the efficient and economic operation of the power generation facility; whether completed or at any stage of development and construction or intended to be developed and constructed for the purpose of supply of power as per this Agreement;</u>
<b>“Power Station’s Net Capacity”</b>	shall mean <i>[.....]</i> MW, being Installed Capacity of the Power Station measured at the bus-bar, reduced by the normative auxiliary power consumption as prescribed by CERC from time to time;



In case of a dedicated transmission line connecting the bus-bar and the Interconnection Point, the Power Station's Net Capacity shall be ....MW, being the Installed Capacity of the Power Station measured at the Interconnection Point and reduced by the normative auxiliary power consumption and losses, if any, of such dedicated transmission line;

**“Preliminary Default Notice”** shall have the meaning ascribed thereto in Article 11 of this Agreement;

**“Project Company”** shall mean the company where incorporated by the Successful Bidder, as per Indian laws, to undertake all rights and obligations of the Seller and to sign this Agreement for the supply of power to the Procurers as per the terms of this Agreement;

**“Provisional Bill”** shall mean the bill raised by the Seller as ascribed thereto in Article 8.3.6 of this Agreement;

19.5 "Prudent Utility Practices" shall mean the practices, methods and standards that are generally accepted internationally from time to time by electric utilities for the purpose of ensuring the safe, efficient and economic design, construction, commissioning, operation and maintenance of power generation equipment and which practices, methods and standards shall be adjusted as necessary, to take account of:

c) operation and maintenance guidelines recommended by the manufacturers of the plant and equipment to be incorporated in the Power Station;

d) the requirements of Indian Law; and

the physical conditions at the site of the Power Station;

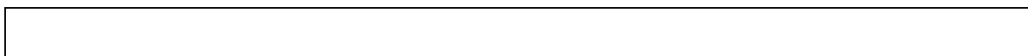
**“Quoted Capacity Charges”** shall mean the sum total of Quoted Non Escalable Capacity Charges and Quoted Escalable Capacity Charges;

**“Quoted Energy Charges”** shall mean the sum total of Quoted Non Escalable Energy Charges and Quoted Escalable Energy Charge;

**“Quoted Escalable Capacity Charges”** shall have the meaning as ascribed thereto in Column 5 of Schedule 8 of this Agreement;

**“Quoted Escalable Energy Charges”** [In case of Fuel being other than imported coal/ imported R-LNG] shall have the meaning as ascribed thereto in Column 7 of Schedule 8 of this Agreement;

[In case of Fuel being imported coal/ imported R-LNG] shall have the meaning as ascribed thereto in Column 9 of Schedule 8 of this Agreement;



“Quoted Escalable Fuel Handling Charges” [Insert this definition if applicable] shall have the meaning as ascribed thereto in Column 15 of Schedule 8 of this Agreement;

“Quoted Escalable Inland Transportation Charges” [Insert this definition if applicable] shall have the meaning as ascribed thereto in Column 11 of Schedule 8 of this Agreement;

“Quoted Escalable Overseas Transportation Charges” [Insert this definition if applicable] shall have the meaning as ascribed thereto in Column 13 of Schedule 8 of this Agreement;

“Quoted Non Escalable Capacity Charges” shall have the meaning as ascribed thereto in Column 4 of Schedule 8 of this Agreement;

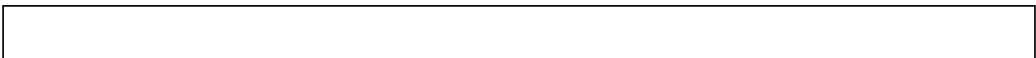
“Quoted Non Escalable Energy Charges” [In case of Fuel being other than imported coal/ imported R-LNG] shall have the meaning as ascribed thereto in Column 8 of Schedule 8 of this Agreement;

[In case of Fuel being imported coal/ imported R-LNG] shall have the meaning as ascribed thereto in Column 6 of Schedule 8 of this Agreement;

“Quoted Non Escalable Fuel Handling Charges” shall have the meaning as ascribed thereto in Column 14 of Schedule 8 of this Agreement;  
[Insert this definition if applicable]

“Quoted Non Escalable Inland Transportation Charges” [Insert this definition if applicable] shall have the meaning as ascribed thereto in Column 10 of Schedule 8 of this Agreement;

“Quoted Non Escalable Overseas Transportation Charges” [Insert this definition if shall have the meaning as ascribed thereto in Column 12 of Schedule 8 of this Agreement;



applicable]

“Quoted Tariff “ shall mean the sum total of Quoted Energy Charges and Quoted Capacity Charge;

“RBI” shall mean the Reserve Bank of India;

“Rebate” shall have the same meaning as ascribed thereto in Article 8.3.6 of this Agreement;

“Receivables” shall have the meaning as ascribed thereto in Article 8.4.11 of this Agreement;

"Regional Energy Accounts" or "REA" shall have the same meaning as in the Grid Code and issued by the relevant RPC secretariat or other appropriate agency for each Week and for each Month (as per their prescribed methodology), including the revisions and amendments thereof;

“Revised Scheduled Delivery Date” shall have the meaning ascribed thereto in Article 4.1 of this Agreement;

“RFP” shall mean the Request For Proposal document along with all formats dated 25.02.09 issued by the Authorized Representative and shall include any modifications, amendments or alterations and clarifications thereto;

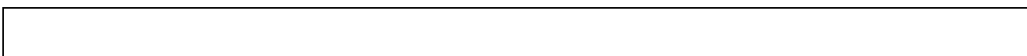
“RFP Documents” shall mean the following documents entered into in respect of the procurement of power, by the Parties to the respective agreements:

- d) PPA;
- e) Default Escrow Agreement;
- f) Agreement to Hypothecate cum Deed of Hypothecation; and

"RLDC" shall mean the relevant Regional Load Dispatch Centre established under Sub-section (1) of Section 27 of the Electricity Act, 2003;

"RPC" shall mean the relevant Regional Power Committee established by the Government of India for a specific region in accordance with the Electricity Act, 2003 for facilitating integrated operation of the power system in that region;

"Rupees" or "Rs." shall mean Indian rupees, the lawful currency of India;





<b><u>"SBAR"</u></b>	<b>shall mean the prime lending rate per annum applicable for loans with one (1) year maturity as fixed from time to time by the State Bank of India. <u>In</u> the absence of such rate, SBAR shall mean any other arrangement that substitutes such prime lending rate as mutually agreed to by the Parties;</b>
<b><u>"Scheduled Delivery Date"</u></b>	<i>shall have the meaning ascribed thereto in Article 4.1 of this Agreement;</i>
<b>"Scheduled Energy" or "Scheduled Generation"</b>	<b>Shall mean scheduled generation as defined in the ABT;</b>
<b>"Scheduled Outage"</b>	<b>shall mean the final outage plan as approved by the RPC as per the provisions of the Grid Code;</b>
<b><u>"Selected Bid"</u></b>	<b><u>shall mean the Bid of the Successful Bidder as accepted by the Procurer/ Authorized Representative, copy of which is attached herewith and marked as Schedule 10 of this Agreement;</u></b>
<b><u>"Selectee"</u></b> <i>[Insert if the Seller chooses the option of Lender's substitution rights]</i>	<b><u>shall mean a new company (i) proposed by the Lenders pursuant to Schedule 12 hereof and approved by the Procurers (ii) or proposed by the Procurers in accordance with Schedule 12 hereof and approved by the Lenders, for substituting the Seller for the residual period of the PPA by amendment of the PPA or by execution of a fresh PPA in accordance with the terms and conditions contained in the said Schedule;</u></b>
<b><u>"SERC"</u></b>	<i>shall mean the Electricity Regulatory Commission of any State in India constituted under Section-82 of the Electricity Act, 2003 or its successors, and includes a Joint Commission constituted under Sub-section (1) of Section 83 of the Electricity Act 2003;</i>
<b>"Settlement Period"</b>	<b><u>shall mean</u> the time period for the issuance of daily generation and drawl schedules as <u>provided in ABT</u>;</b>
<b>"SLDC"</b>	<b>shall mean the centre established under Sub-section (1) of Section 31 of the Electricity Act 2003, relevant for the <u>State(s)</u> where either of the Interconnection Point, the Injection Point and/or the Delivery Point are located;</b>
<b>"SLDC Charges"</b>	<b><u>shall mean the charges levied by any of the relevant SLDCs for the supply of power by the Seller to the Procurers;</u></b>
<b>"State Transmission"</b>	<b><u>shall mean</u> the Board or the Government company notified by the respective State Government under Sub-section (1)</b>

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Utility” or “STU” of Section 39 of the Act;

“STU Interface”

*shall mean the point at which the CTU network is connected to the intrastate transmission system of the Procurers’ State, and at which the Procurers agree to receive power up to the Requisitioned Capacity;*

*For generation source in the same state as that of the Procurers, the STU Interface shall be the bus-bar of the generating station from which power is contracted to be supplied, at an appropriate voltage level as specified by the STU.*

“Substitution Notice”

shall have the same meaning as ascribed to in Clause 12.3 of Schedule 12 of this Agreement;

“Successful Bidder”

shall mean the Bidder selected by the Authourized Representative pursuant to the RFP for supply of power by itself or through the Project Company to the Procurers as per the terms of PPA and other RFP Documents, and to whom a LOI has been issued;

“Supplementary Bill”

shall mean a bill other than a Monthly Bill raised by any of the Parties in accordance with Article 8 of this Agreement;

“Tariff”

shall mean the tariff as computed in accordance with Schedule 4 of this Agreement;

“Tariff Payment”

shall mean the payments to be made under Monthly Bills as referred to in Schedule 4 and the relevant Supplementary Bills;

“Termination Notice”

shall mean the notice given by either Parties for termination of this Agreement in accordance with Articles 3.4.2, 3.4.3, 3.4.4, 3.4.5, 4.1.1, 11.3.4, 11.4.5, 11.5.1 and Clause 7.2.3 of Schedule 7 of this Agreement;

“Term of Agreement”

shall have the meaning ascribed thereto in Article 2.2 of this Agreement;

[Insert this definition in case Seller is not a Trading Licensee]

“Total Debt Amount”

shall mean the sum of the following amounts, expressed in Rupees (with all amounts denominated in currencies other than Rupees being converted to Rupees at the reference exchange rate, which is the selling rate in Rupees for the foreign currency on the relevant Day, as notified by the State Bank of India as its telegraphic transfer rate at 12:00 noon on the date of issuance of Substitution Notice by the Lenders

- (a) the principal amount of the debt incurred by the Seller (as per the terms of the Financing Agreements) to finance the Power Station according to the Capital Structure Schedule which

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remains outstanding on the date of issuance of Substitution Notice by the Lender after taking account of any debt repayments which could have been made out of the Tariff Payments received by the Seller on or before the date of issuance of Substitution Notice by the Lender as per the terms provided in the Financing Agreements; and

- (b) all accrued interest and financing fees payable under the Financing Agreements on the amounts referred to in (a) above from the date of the Capacity Charge payment (as specified in Clause 4.2.1 of Schedule 4 hereof) immediately preceding the date of issuance of Substitution Notice by the Lender or, if the Capacity Charges have not yet fallen due to be paid, from the most recent date when interest and financing fees were capitalised.

**[Insert if applicable]**  
**“Trading Licensee”** shall mean the Seller which is an Electricity Trader and has submitted an exclusive power purchase agreement executed with the Developer;

**“Transmission Service Agreement”** shall mean the agreements(s) signed by the Seller and the relevant transmission licensee for transmission of power up to the Aggregate Contracted Capacity from the Injection Point to the Delivery Point;

**“Ultimate Parent Company”** shall mean a company which directly or indirectly owns at least twenty six percent (26%) paid up equity capital in the Seller or Member (as the case may be) and such Seller or Member (as the case may be) shall be under the direct control or indirectly under the common control of such company;

**“Unscheduled Interchange” or “UI”** shall have the meaning ascribed thereto in Rule 24 of the CERC (Terms and Conditions of tariff) Regulations 2004 as amended or revised from time to time;

In case the Power Station and the Procurers being within the same state, the Unscheduled Interchange shall be regulated by the respective SERC regulations;

**“Unscheduled Outage”** shall mean an outage that is not a Scheduled Outage and is for the purpose of performing work on specific plant and equipments, which work could not be postponed till the next Scheduled Outage;

**“US \$” or “USD” or “Dollar” [for imported fuel only]** shall mean United States Dollars, the lawful currency of the United States of America;

**“Week”** shall mean a calendar week commencing from 00:00 hours of Monday, and ending at 24:00 hours of the following

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Sunday;

"Wheeling Charges" or "Transmission Charges" shall mean the charges to be paid by the Seller and reimbursed by the Procurers as transmission tariff for usage of intervening CTU networks for the transmission of power from the Injection Point up to the Delivery Point, as approved by the Appropriate Commission (excluding the charges for the STU network or charges of STU system operation or SLDC Charges, if any);

## 15.26 Interpretation

Save where the contrary is indicated, any reference in this Agreement to:

- 1.2.19 "Agreement" shall be construed as including a reference to its Schedules, Appendices and Annexures;
- 1.2.20 An "Article", a "Recital", a "Schedule" and a "paragraph / clause" shall be construed as a reference to an Article, a Recital, a Schedule and a paragraph/clause respectively of this Agreement;
- 1.2.21 A "crore" means a reference to ten million (10,000,000) and a "lakh" means a reference to one tenth of a million (1,00,000);
- 1.2.22 An "encumbrance" shall be construed as a reference to a mortgage, charge, pledge, lien or other encumbrance securing any obligation of any person or any other type of preferential arrangement (including, without limitation, title transfer and retention arrangements) having a similar effect;
- 1.2.23 "Indebtedness" shall be construed so as to include any obligation (whether incurred as principal or surety) for the payment or repayment of money, whether present or future, actual or contingent;
- 1.2.24 A "person" shall be construed as a reference to any person, firm, company, corporation, society, trust, government, state or agency of a state or any association or partnership (whether or not having separate legal personality) of two or more of the above and a person shall be construed as including a reference to its successors, permitted transferees and permitted assigns in accordance with their respective interests;
- 1.2.25 "Rupee", "Rupees" and "Rs." shall denote Indian Rupees, the lawful currency of India;
- 1.2.26 The "winding-up", "dissolution", "insolvency", or "reorganization" of a company or corporation shall be construed so as to include any equivalent or analogous proceedings under the Law of the jurisdiction in which such company or corporation is incorporated or any jurisdiction in which such company or corporation carries on business including the seeking of

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liquidation, winding-up, reorganization, dissolution, arrangement, protection or relief of debtors;

1.2.27 Words importing the singular shall include the plural and vice versa;

1.2.28 This Agreement itself or any other agreement or document shall be construed as a reference to this or to such other agreement or document as it may have been, or may from time to time be, amended, varied, novated, replaced or supplemented;

1.2.29 A Law shall be construed as a reference to such Law including its amendments or re-enactments from time to time;

1.2.30 A time of day shall, save as otherwise provided in any agreement or document be construed as a reference to Indian Standard Time;

1.2.31 Different parts of this Agreement are to be taken as mutually explanatory and supplementary to each other and if there is any inconsistency between or among the parts of this Agreement, they shall be interpreted in a harmonious manner so as to give effect to each part;

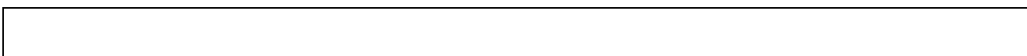
1.2.32 The tables of contents and any headings or sub-headings in this Agreement have been inserted for ease of reference only and shall not affect the interpretation of this Agreement;

1.2.33 All interest payable under this Agreement shall accrue from day to day and be calculated on the basis of a year of three hundred and sixty five (365) days;

1.2.34 The words "hereof" or "herein", if and when used in this Agreement shall mean a reference to this Agreement;

1.2.35 The terms "including" or "including without limitation" shall mean that any list of examples following such term shall in no way restrict or limit the generality of the word or provision in respect of which such examples are provided;

1.2.36 The contents of Schedule 10 shall be referred to for ascertaining accuracy and correctness of the representations made by the Successful Bidder / Seller in Clause 7.2.1(vi) of Schedule 7 hereof.



## 16 ARTICLE 2 : TERM OF AGREEMENT

### 16.1 Effective Date

16.1.1 This Agreement shall come into effect from the date it is executed and delivered by the last of all the Parties and such date shall be referred to as the Effective Date.

### 16.2 Term of Agreement

16.2.1 This Agreement shall be valid for a term commencing from the Effective Date until the Expiry Date ("Term of Agreement"), unless terminated earlier pursuant to Article 2.3. Upon the occurrence of the Expiry Date, this Agreement shall, subject to Article 2.4, automatically terminate, unless mutually, extended by all the Parties on mutually agreed terms and conditions, at least one hundred and eighty (180) days prior to the Expiry Date, subject to approval of the Rajasthan Electricity Regulatory Commission.

### 16.3 Early Termination

16.3.1 This Agreement shall terminate before the Expiry Date:

- iii. if either all the Procurers (jointly) or the Seller exercises a right to terminate, pursuant to Articles 3.4.2, 3.4.3, 3.4.4, 3.4.5, 4.1.1, 11.3.4, 11.4.5, 11.5.1 or Clause 7.2.3 of Schedule 7 of this Agreement; or
- iv. in such other circumstances as the Seller and all the Procurers (jointly) may agree, in writing.

### 16.4 Survival

16.4.1 The expiry or termination of this Agreement shall not affect any accrued rights, obligations and liabilities of the Parties under this Agreement, including the right to receive liquidated damages as per the terms of this Agreement, nor shall it affect the survival of any continuing obligations for which this Agreement provides, either expressly or by necessary implication, which are to survive after the Expiry Date or termination including those under Article 3.4.2, Article 9 (Force Majeure), Article 11 (Events of Default and Termination), Article 12 (Liability and Indemnification), Article 14 (Governing Law and Dispute Resolution), Article 15 (Miscellaneous Provisions), and other Articles and Schedules of this Agreement which expressly or by their nature survive the Term or termination of this Agreement shall continue and survive any expiry or termination of this Agreement.

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17 ARTICLE 3 : CONDITIONS SUBSEQUENT TO BE SATISFIED BY SELLER/ PROCURERS

**17.1 Satisfaction of conditions subsequent by the Seller**

17.1.1 The Seller agrees and undertakes to duly perform and complete the following activities at the Seller's own cost and risk within ten (10) months from the Effective Date, unless such completion is affected by any Force Majeure event or due to the Procurers' failure to comply with their obligations under Article 3.2.1 of this Agreement, or if any of the activities is specifically waived in writing by the Procurers (jointly):

- j) **The ..... *[Insert "Seller shall have executed the Fuel Supply Agreement and have provided the copy of the same to the Procurers" if Seller is NOT a Trading Licensee, or insert "Seller shall ensure that the Developer has executed the Fuel Supply Agreement and further ensure that a copy of the same is provided to the Procurers" if Seller is a Trading Licensee] [this condition shall not be included in case the generation source, chosen by the Seller is a captive coal-mine based thermal plant or a hydro-electric plant];***
- k) **In case the Power Station is located outside the state of the Procurers, the Seller shall have obtained all the necessary permission for the long term open access for the intrastate transmission system from the Power Station bus bar to the Injection Point (except in case of dedicated transmission lines) and shall have executed all necessary agreements for such transmission access and provided a copy of the same to the Procurers;**
- l) **The Seller shall have obtained the necessary permission for long term open access for the transmission system from the Injection Point up to the Delivery Point and have executed the Transmission Service Agreement with the transmission licensee for transmission of power from the Injection Point up to the Delivery Point and provided a copy of the same to the Procurers;**
- m) ***[Insert this condition for new plants] [Insert the following if Seller is NOT a Trading Licensee] "The Seller shall have acquired and taken the possession of the balance area of land out of the total land requirement as mentioned in the proposal filed before the competent authority at the RFP stage.;" [or insert if Seller is a Trading Licensee] "The Seller shall ensure that the Developer has acquired and taken the possession of the balance area of land out of the total land requirement as mentioned.***

**The Seller shall submit the letter of possession and equivalent documents for such area of land as mentioned above to the Procurers.**

- n) ***[Insert this condition for new plants] [Insert the following if Seller is NOT a Trading Licensee] "The Seller shall have awarded the Engineering, Procurement and Construction contract ("EPC contract) or main plant***

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**contract for boiler, turbine and generator (“BTG”), for setting up of the Power Station and shall have given to such contractor an irrevocable NTP and shall have submitted a letter to this effect to the Procurer(s);” or insert if Seller is a Trading Licensee, “The Seller shall ensure that the Developer shall have awarded the Engineering, Procurement and Construction contract (“EPC contract”) or main plant contract for boiler, turbine and generator (“BTG”), for setting up of the Power Station and shall have given to such contractor an irrevocable NTP and the Seller shall have submitted a letter to this effect to the Procurer(s);” ]**

***[Insert this condition for existing plants]*** The Seller shall submit evidence of commissioning of the Power Station, including details of the Installed Capacity;

- o) The Seller shall have obtained all Consents, Clearances and Permits required for supply of power to the Procurers as per the terms of this Agreement. In case a Project Company is incorporated and the Consents, Clearances and Permits have been obtained in the name of a company other than the Project Company, all such Consents, Clearances and Permits shall have been transferred in the name of such Project Company;**
- p) The Seller shall have sent a written notice to all the Procurers indicating the Aggregate Contracted Capacity and total Installed Capacity for each unit and for the Power Station as a whole expressed in MW;**
- q) *[Insert this condition for new plants] [Insert the following if Seller is NOT a Trading Licensee, “The Seller shall have achieved Financial Closure and has provided a certificate from the lead banker to this effect;” or insert the following if Seller is a Trading Licensee, “The Seller shall ensure that the Developer shall have achieved Financial Closure and has provided a certificate from the lead banker to this effect;”]***
- r) *[To be included if the Seller opts for substitution rights of the Lender(s)]* The Seller shall have provided an irrevocable letter to the Lenders duly accepting and acknowledging the rights provided to the Lenders under the terms of this Agreement and all other RFP Documents;**

## **17.2 Satisfaction of conditions subsequent by the Procurers**

17.2.1 The Procurers agree and undertake to duly perform and complete the following activities at the Procurers’ own cost and risk within six (6) Months from the Effective Date, unless such completion is affected by any Force Majeure event or due to the Seller’s failure to comply with their obligations under Article 3.1.1 of this Agreement or if any of the activities is specifically waived in writing by the Seller:

- d) The Procurers shall facilitate the representation of the Seller in the relevant RPC forum in coordinating on applicable inter-state/regional transmission linkages required from the Injection Point to the Delivery Point.**

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- e) *[Insert this clause in case the Power Station is located within the state of the Procurer and STU network is to be used]* **The Procurers shall have obtained necessary transmission linkage for long term open access for the transmission system from the Power Station switchyard up to the Delivery Point and shall have executed the Transmission Service Agreement with the STU for transmission of power from the Power Station switchyard up to the Delivery Point and provided a copy of the same to the Seller. Further, the Procurers shall indicate in writing to the Seller, the voltage level at which supply of power is to be made to the Procurers.**
- f) **The Procurers shall have obtained the order of the Rajasthan Electricity Regulatory Commission for adoption of the tariff under Section 63 of the Electricity Act 2003 and given a copy of the same to the Seller.**

### 17.3 Joint responsibilities of the Procurers and the Seller

17.3.1 ***The Lead Procurer and the Seller shall have jointly agreed on the specific date(s) for commencement of supply of power and quantum of the Contracted Capacity to be supplied to Procurers from each such date. Such mutually agreed date(s) shall not be later than the Scheduled Delivery Date, and the total quantum of power shall be equal to the Aggregate Contracted Capacity.***

17.3.2 ***These date(s) shall be mutually agreed upon within ten (10) Months and shall be the Revised Scheduled Delivery Date(s) for the respective quantum of power.***

### 17.4 Consequences of non-fulfillment of conditions subsequent

17.4.1 If any one or more of the conditions specified in Article 3.1 is not duly fulfilled by the Seller, even within “three (3) Months after the time specified under Article 3.1, otherwise than for the reasons directly attributable to the Procurers or Force Majeure event in terms of Article 3.4.3, then on and from the expiry of such period and until the Seller has satisfied all the conditions specified in Article 3.1, the Seller shall, on weekly basis, be liable to furnish to the Procurers additional Contract Performance Guarantee from any of the banks listed in Schedule 11 of this Agreement, of Rs. .... (.....) [Insert Amount not less than that derived on the basis of Rs. 1.50 lakhs per MW of Contracted Capacity], which has been provided separately to each of the Procurers for the amount calculated pro-rata (and rounded off to ..... [insert amount]) with the principle that amounts below Rupees ..... [insert amount] shall be rounded down and amounts of Rupees ..... [insert amount] and above shall be rounded up) in the ratio of Contracted Capacities”, within two (2) Business Days of expiry of every such Week. Such additional Contract Performance Guarantee shall

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initially be valid till the Scheduled Delivery Date, and the Procurers shall be entitled to hold and/ or invoke the Contract Performance Guarantee, including such additional Contract Performance Guarantee, in accordance with the provisions of this Agreement. However, upon satisfaction of the conditions subsequent by the Seller, the additional Contract Performance Guarantee shall be returned by the Procurers.

17.4.2 Subject to Article 3.4.3, if:

- (iii) fulfillment of any one or more of the conditions specified in Article 3.1 is delayed beyond the period of three (3) Months after the date specified in Article 3.1 above, and the Seller fails to furnish the additional Contract Performance Guarantee to the Procurers in accordance with Article 3.4.1 hereof; or
- (iv) the Seller furnishes additional Contract Performance Guarantee to the Procurers in accordance with Article 3.4.1 hereof, but fails to fulfill the conditions specified in Article 3.1 for a period of six (6) Months beyond the period specified in Article 3.1 above,

*all the Procurers (jointly) or “the Seller”]* shall have the right to terminate this Agreement by giving a Termination Notice to the other Party in writing of at least seven (7) days. The termination of the Agreement shall take effect upon the expiry of the last date of the said notice period (“Termination Date”).

If the Procurers elect to terminate this Agreement in the event specified in the preceding paragraph of this Article, the Seller shall be liable to pay to the Procurer(s) on the Termination Date an amount of Rupees ..... (.....) [*Insert amount not less than that derived on the basis of Rs. 40.00 lakhs per MW of the Contracted Capacity*] only as liquidated damages.

The Procurers shall be entitled to recover this amount of liquidated damages on the Termination Date, by invoking the Contract Performance Guarantee and shall then return the balance Contract Performance Guarantee, if any, to the Seller. If the Procurers are unable to recover the amount of liquidated damages or any part thereof from the Contract Performance Guarantee, the amount of liquidated damages not recovered from the Contract Performance Guarantee, if any, shall be payable by the Seller to the Procurers within ten (10) days from the Termination Date.

For the avoidance of doubt, it is clarified that this Article shall survive the termination of this Agreement.

17.4.3 In case of inability of the Seller to fulfill any one or more of the conditions specified in Article 3.1 due to any Force Majeure event, the time period for fulfillment of the

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Conditions Subsequent as mentioned in Article 3.1, shall be extended for the period of such Force Majeure event, subject to a maximum extension period of ten (10) Months, continuous or non-continuous in aggregate. Thereafter, this Agreement may be terminated by either the Procurers (jointly), or the Seller by giving a Termination Notice of at least seven (7) days, in writing to the other Party. The termination of the Agreement shall take effect upon the expiry of the last date of the said notice period.

17.4.4 Similarly, in case of inability of the Procurers to fulfill the conditions specified in Article 3.2 due to any Force Majeure event, the time period for fulfillment of the condition subsequent as mentioned in Article 3.2, shall be extended for the period of such Force Majeure event, subject to a maximum extension period of ten (10) Months, continuous or non-continuous in aggregate. Thereafter, this Agreement may be terminated by either Procurers (jointly), or the Seller by giving a Termination Notice of at least seven (7) days, in writing to the other Party. The termination of the Agreement, shall take effect upon the expiry of the last date of the said notice period.

17.4.5 In case of inability of the Procurers to perform the activities specified in Article 3.2 within the time period specified therein, otherwise than for the reasons directly attributable to the Seller or Force Majeure event, the time period for the fulfillment of condition subsequent by the Procurers as mentioned in Article 3.2 would be extended for an additional time period which may be required by the Procurers to complete the activities mentioned in Article 3.2, subject to a maximum additional time period of three (3) months. Thereafter, this Agreement may be terminated by the Seller at its option, by giving a Termination Notice of at least seven (7) days, in writing to the Procurers. If the Seller elects to terminate this Agreement, the Procurers shall, within a period of thirty (30) days of termination by the Seller, release the Contract Performance Guarantee of the Seller forthwith. In addition, the Procurers shall pay to the Seller as liquidated damages, a sum equivalent to ten percent (10%) of the value of the Contract Performance Guarantee.

17.4.6 No Tariff adjustment shall be allowed on account of any extension of time arising under any of the sub-articles of Article 3.4;

Provided that due to the provisions of Articles 3.4.3, 3.4.4 and 3.4.5, any increase in the time period for completion of conditions subsequent mentioned under Article 3.1, shall also lead to an equal extension in the Scheduled Delivery Date or the Revised Scheduled Delivery Date, as the case may be.

## **17.5 Contract Performance Guarantee**

17.5.1 The Performance Guarantee furnished under this Agreement shall be for guaranteeing the commencement and continuity of the supply of power up to the Contracted Capacity within the time specified in this Agreement.

17.5.2 The failure on the part of the Seller to furnish and maintain the Contract Performance Guarantee shall be a material breach of the term of this Agreement on the part of the Seller.

17.5.3 If the Seller fails to commence supply of power on the respective Revised Scheduled Delivery Date(s) or the Scheduled Delivery Date specified in this Agreement, subject to

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conditions mentioned in Article 4.7.1, the Procurers jointly shall have the right to encash the Contract Performance Guarantee and appropriate in their favour as liquidated damages an amount specified in Article 4.8.1, without prejudice to the other rights of the Procurers under this Agreement.

## **17.6 Reduction in the amount of Contract Performance Guarantee**

17.6.1 On successful supply of power as per the terms of this Agreement for a duration of five (5) years from the Delivery Date and provided that there has been no Seller Event of Default in the immediately preceding thirty-six (36) Months, the value of the Contract Performance Guarantee shall be reduced by an aggregate amount of Rupees ..... [Insert amount calculated at Rs. 15 lakhs / MW of the Contracted Capacity]. The Seller shall thereafter provide such reduced Contract Performance Guarantee separately to each of the Procurers for the amount calculated pro-rata (and rounded off to ..... [insert amount]) with the principle that amounts below Rupees ..... [insert amount] shall be rounded down and amounts of Rupees ..... [insert amount] and above shall be rounded up) in the ratio of Contracted Capacities”, in lieu of the Contract Performance Guarantee, of an amount of Rupees ..... (.....) [Insert amount calculated at Rs. 30 lakhs per MW of the Contracted Capacity]. Such reduced Contract Performance Guarantee shall be initially valid for a period, which is the lower of five (5) years or the balance Term of this Agreement.

## **17.7 Renewal of Contract Performance Guarantee**

17.7.1 The Seller shall ensure the renewal of the Contract Performance Guarantee before a date, which is thirty (30) days prior to the expiry of the then existing validity of the Contract Performance Guarantee.

17.7.2 Such renewed Contract Performance Guarantee shall be initially valid for a period which is the lower of five (5) years or the balance Term of this Agreement.

17.7.3 If such extended Contract Performance Guarantee is not received as per the date specified above, the Procurer(s) shall have the right to encash the then existing Contract Performance Guarantee.

## **17.8 Return of Contract Performance Guarantee**

17.8.1 The Procurers shall return / release the Contract Performance Guarantee in the event of (i) applicability of Article 3.4.2 to the extent the Contract Performance Guarantee is valid for an amount in excess of Rupees ..... (.....) [Insert amount not less than that derived on the basis of 40.00 lakhs per MW of the Contracted Capacity], or (ii) termination of this Agreement by any Party under Article 3.4.3, 3.4.4 or Article 3.4.5 of this Agreement.

17.8.2 Subject to the provisions of Article 3.8.1, the Procurers shall return / release the Contract Performance Guarantee to the Seller at the end of the Term of this Agreement.

17.8.3 The return / release of the Contract Performance Guarantee shall be without prejudice to other rights of the Procurers under this Agreement.

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## 18.1 Commencement of Supply of Power to Procurers

18.1.1 The Seller shall be responsible to commence supply of power up to the Aggregated Contracted Capacity by the Scheduled Delivery Date in accordance with the provisions of this Agreement, which is ..... *[insert the date specified by the Authorized Representative in the RFP]*. However, the Seller and the Procurers may mutually agree for commencement of supply of power in a phased manner from the Revised Scheduled Delivery Date(s) as specified in Article 3.3 of this Agreement.

18.1.2 The Seller shall give the Procurers and the concerned RLDC at least sixty (60) days advance preliminary written notice and at least thirty (30) days advance final written notice, of the date on which it intends to commence supply of power.

## 18.2 Seller's Obligations

18.2.1 Subject to the terms and conditions of this Agreement, the Seller undertakes to be responsible, at Seller's own cost and risk, for:

- i) **obtaining all Consents, Clearances and Permits other than those obtained under Article 3.1.1 and maintaining all Consents, Clearances and Permits in full force and effect during the Term of this Agreement; [Insert further in case Seller is a Trading Licensee; "The Seller shall further ensure that the Developer maintains all Consents, Clearances and Permits in full force and effects during the Term of this Agreement"]**
- j) **the commencement of supply of power, up to the Aggregated Contracted Capacity, to the Procurers no later than the Scheduled Delivery Date or the Revised Scheduled Delivery Date(s), as the case may be, such that as much of the Contracted Capacity as can be made available through the use of Prudent Utility Practices will be made available reliably to meet the Procurers' scheduling and dispatch requirements throughout the Term of this Agreement;**
- k) **obtaining all the necessary permissions for the long term open access for the intrastate transmission system for evacuation of power from the Power Station bus bar to the Injection Point (except in case of dedicated transmission lines) and execute all necessary agreements for such transmission access and provide a copy of the same to the Procurers;**
- l) **obtaining open access for transmission of Aggregated Contracted Capacity of power from the Injection Point to the Delivery Point;**
- m) ***[Insert the following if Seller is NOT a Trading Licensee: "Owning the Power Station throughout the Term of this Agreement free and clear of encumbrances, except those expressly permitted under Article 13" or insert the following if Seller is a Trading Licensee: "Ensuring that the Power Station is owned by the Developer throughout the Term of this***

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Agreement free and clear of encumbrances, except those expressly permitted by the Seller through the power purchase agreement between the Seller and Developer”];

- n) *[Insert the following if Seller is NOT a Trading Licensee: “Procuring electricity at the Power Station (including construction, commissioning and start-up power) and to comply in a timely manner all formalities for getting such a supply of electricity” or insert the following if Seller is a Trading Licensee: “ensuring that the Developer of the Power Station procures electricity at the Power Station (including construction, commissioning and start-up power) and complies in a timely manner all formalities for getting such a supply of electricity”];*
- o) providing on a timely basis, all relevant information to the Procurers which may be required for receiving power at the Delivery Point; and
- p) fulfilling all obligations undertaken by the Seller under this Agreement.

### 18.3 Procurers’ Obligations

18.3.1 Subject to the terms and conditions of this Agreement, the Procurers shall:

- g) ensure the availability of Interconnection Facilities and evacuation of power from the Delivery Point before the Scheduled Delivery Date or the Revised Scheduled Delivery Date, as the case may be;
- h) be responsible for payment of the Transmission Charges (from the Injection Point onwards) and applicable RLDC / SLDC charges, limited to the charges applicable to the Contracted Capacity of Procurers. The Procurers shall reimburse any of the above charges, if paid by the Seller;
- i) be responsible for obtaining open access for transmission of their respective Contracted Capacity from the Injection Point to their respective Delivery Point
- j) *[Insert this clause where the Procurer(s) is responsible to arrange for obtaining transmission linkage from the Power Station switchyard in case the Power Station is located within the state of the Procurer(s)]* be responsible for making arrangements for evacuation of their respective Contracted Capacity from the Power Station switchyard to their respective Delivery Point.
- k) make all reasonable arrangements for the evacuation of the Infirm Power from the Power Station; subject to the availability of transmission capacity; and
- l) fulfill all obligations undertaken by the Procurers under this Agreement.

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## 18.4 Purchase and sale of Available Capacity and Scheduled Energy

- 18.4.1 Subject to the terms and conditions of this Agreement, the Seller undertakes to sell to the Procurers, and the Procurers undertake to pay Tariff for all of the Available Capacity up to the Contracted Capacity and corresponding Scheduled Energy.
- 18.4.2 Unless otherwise instructed by all the Procurers (jointly), the Seller shall sell all the Available Capacity to each Procurer in proportion of each Procurer's then existing Contracted Capacity pursuant to Dispatch Instructions of such Procurer.

## 18.5 Right to Contracted Capacity and Scheduled Energy

- 18.5.1 Subject to provisions of this Agreement, the entire Aggregate Contracted Capacity shall be for the exclusive benefit of the Procurers and the Procurers shall have the exclusive right to purchase the entire Aggregate Contracted Capacity from the Seller. The Seller shall not grant to any third party or allow any third party to obtain any entitlement to the Contracted Capacity and/or Scheduled Energy..
- 18.5.2 a ) Notwithstanding Article 4.5.1, the Seller is free to sell such power to any third party prior to the Scheduled Delivery Date or Revised Scheduled Delivery Date(s) as the case may be and any capacity which is in excess of the quantum of power agreed to be supplied under this Agreement from each such Revised Scheduled Delivery Date(s).
- b) Further notwithstanding Article 4.5.1, the Seller shall be permitted to sell power, being a part of the Contracted Capacity to third parties, if:
- iii) **there is a part of Available Capacity corresponding to the Contracted Capacity which has not been Dispatched by the Procurer, ordinarily entitled to receive such part ('Concerned Procurer');** and
- iv) **such part has first been offered, at the same Tariff, to the other Procurers (by the Seller), who were not ordinarily entitled to receive such part and they have chosen to waive or not to exercise their first right to receive such part of the Available Capacity within two (2) hours of being so offered the opportunity to receive such part subject to the provisions regarding scheduling as per IEGC.**
- 18.5.3 If a Procurer does not avail of power up to the Available Capacity provided by the Seller corresponding to such Procurer's Contracted Capacity, and the provisions of Article 4.5.2 (b) have been complied with, the Seller shall be entitled to sell such Available Capacity not scheduled by the Procurers, to any person without losing the right to receive the Capacity Charges from the Concerned Procurer for such unavailed Available Capacity. In such a case, the sale realization in excess of Energy Charges, shall be equally shared by the Seller with the Concerned Procurer. In the event, the Seller sells such Available Capacity to any direct or indirect Affiliate of the Seller/ shareholders of the Seller without obtaining the prior written consent of the Procurer, the Seller shall be liable to sell such Available Capacity to such entity at Tariffs being not less than the Tariff payable by the Concerned Procurer whose capacity is being sold pursuant to this Article. If more than

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one Procurers do not avail of the Available Capacity corresponding to their Contracted Capacity, provisions of this Article shall be applicable to them mutatis mutandis and in such case, fifty percent (50%) of the excess over Energy Charges recovered by the Seller from sale to third party shall be retained by the Seller and the balance fifty percent (50%) shall be provided by the Seller to the Concerned Procurer(s) in the ratio of their Available Capacity not dispatched by such Concerned Procurer(s) and sold by the Seller to third parties. During this period, the Seller will also continue to receive the Capacity Charges from such Procurers.

18.5.4 The sale under Unscheduled Interchange shall not be considered as sale to third party for the purposes of this Agreement.

18.5.5 Upon the Procurers or any Procurer who has not availed of the Available Capacity, as envisaged under this Article, intimating to the Seller of its intention and willingness to avail of the part or whole of the Available Capacity corresponding to the Contracted Capacity not availed of and therefore sold to the third party, the Seller shall, notwithstanding anything contained in the arrangement between the Seller and any third party, commence supply of such capacity to the Concerned Procurers from the later of two (2) hours from receipt of notice in this regard from the Concerned Procurers or the time for commencement of supply specified in such notice subject to the provisions regarding scheduling as per IEGC.

## 18.6 Alternative Source of Power Supply

18.6.1 During the Operating Period, if the Seller is unable to provide supply of power to the Procurers up to the Aggregate Contracted Capacity from the Power Station except due to a Force Majeure Event or due to a Procurer Event of Default, the Seller is free to supply power up to the Aggregate Contracted Capacity from an alternative generation source to meet its obligations under this Agreement. Such power shall be supplied to the Procurers at the same Tariff as per the terms of this Agreement and subject to provisions of Article 4.6.2. In case the transmission and other incidental charges, including but not limited to application fees for open access, RLDC/SLDC charges, etc., applicable from the alternative source of power supply are higher than the applicable Transmission Charges from the Injection Point to the Delivery Point, the Seller would be liable to bear such additional charges.

18.6.2 The Seller shall be permitted to supply power to the Procurers from any alternative source for a maximum continuous duration of six (6) Months or a maximum non continuous period of twelve (12) months during the Operating Period, excluding any period of supply from alternative generation source that the Seller avails prior to the commencement of supply from the generation source named in this Agreement as provided for in Article 4.8.

## 18.7 Extensions of Time

18.7.1 In the event that the Seller is prevented from performing its obligations under Article 4.1.1 by the Revised Scheduled Delivery Date(s) or the Scheduled Delivery Date, as the case may be, due to:

d) **any Procurer Event of Default; or**

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e) **Force Majeure Events affecting the Procurer(s), or**

f) **Force Majeure Events affecting the Seller,**

the Revised Scheduled Delivery Date(s), Scheduled Delivery Date and the Expiry Date shall be deferred, subject to the limit prescribed in Article 4.7.2, for a reasonable period but not less than 'day for day' basis, to permit the Seller or the Procurer(s) through the use of due diligence, to overcome the effects of the Force Majeure Events affecting the Seller or the Procurer(s), or till such time such Event of Default is rectified by the Procurer(s).

18.7.2 In case of extension occurring due to reasons specified in Article 4.7.1(a), any of the dates specified therein can be extended, subject to the condition that the Scheduled Delivery Date would not be extended by more than twelve (12) Months or the date on which the Seller elects to terminate this Agreement, whichever is later.

18.7.3 In case of extension due to reasons specified in Article 4.7.1(b) and (c), and if such Force Majeure Event continues even after the maximum period of twelve (12) Months, any of the Parties may choose to terminate the Agreement as per the provisions of Article 11.5.

18.7.4 If the Parties have not agreed, within thirty (30) days after the affected Party's performance has ceased to be affected by the relevant circumstance, on the time period by which the Revised Scheduled Delivery Date(s), Scheduled Delivery Date or the Expiry Date should be deferred by, any Party may raise the Dispute to be resolved in accordance with Article 14.

18.7.5 As a result of such extension, the Scheduled Delivery Date and the Expiry Date newly determined shall be deemed to be the Scheduled Delivery Date and the Expiry Date for the purposes of this Agreement.

## **18.8 Liquidated Damages for delay in commencement of supply of power to Procurers**

18.8.1 If the Seller is unable to commence supply of power to the Procurers by the Scheduled Delivery Date or the Revised Scheduled Delivery Date, as the case may be, other than for the reasons specified in Article 4.7.1, the Seller shall pay to each Procurer liquidated damages as per this Article 4.8.1, proportionate to the then existing Contracted Capacity, for the delay in such commencement of supply of power and making the Contracted Capacity available for dispatch by the Scheduled Delivery Date or the Revised Scheduled Delivery Date, as the case may be.

Provided that the Seller shall have the option to supply power from any alternative generation source from the Scheduled Delivery Date or the Revised Scheduled Delivery Date, as the case may be, for a continuous period not exceeding twelve (12) months at the same Tariff as per the terms of this Agreement. Provided further that the cumulative Availability from such alternative generation source in the twelve (12) months period

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shall not be less than the Normative Availability. If the Seller fails to commence such supply of power or fails to achieve the required Availability as mentioned above in this para, it shall pay to the Procurers liquidated damages as per this Article 4.8.1.

In case the transmission and other incidental charges, including but not limited to application fees for open access, RLDC/SLDC charges, etc., applicable from the alternative source of power supply are higher than the applicable Transmission Charges from the Injection Point to the Delivery Point, the Seller would be liable to bear such additional charges.

The sum total of the liquidated damages payable by the Seller to the Procurers shall be calculated as follows:

$$\text{SLDb} = [\text{CC} * \text{d} * \text{DR1}], \quad \text{if } \text{d} \leq 60$$

$$\text{SLDb} = [\text{CC} * 60 * \text{DR1}] + [\text{CC} * (\text{d} - 60) * \text{DR2}], \quad \text{if } \text{d} > 60$$

where:

- e) **“SLDb” are the liquidated damages payable by the Seller during the period beginning with the day from the Scheduled Delivery Date or the Revised Scheduled Delivery Date or from the end of continuous period of supply from the alternative generation source or for the period during which the Availability from the alternative generating source is less than the Normative Availability, as the case may be, up to and including the day on which supply of power to the Procurers actually commences from the generation source as provided in this Agreement;**
- f) **“CC” is the Contracted Capacity;**
- g) **“d” is the number of days in the period beginning with the day after the Scheduled Delivery Date or the Revised Scheduled Delivery Date or from the end of continuous period of supply from the alternative generation source or for the period during which the Availability from the alternative generating source is less than the Normative Availability, as the case may be, up to and including the day on which supply of power to the Procurers actually commences from the generation source as provided in this Agreement;**
- h) **“DR1” is Rs. Ten Thousand (10,000) of damages per MW per day of delay in case “d” is equal to or less than 60 days and “DR2” is Rs. Fifteen Thousand (15,000) of damages per MW per day of delay in case “d” is more than 60 days.**

18.8.2 The Seller’s maximum liability under this Article 4.8 shall be limited to the amount of liquidated damages calculated in accordance with Article 4.8.1 for and up to twelve (12) Months of delay for commencement of supply of power from the Scheduled Delivery Date or the Revised Scheduled Delivery Date, as the case may be.

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Provided that in case of failure of the Seller to start supply of power to Procurers even after expiry of twelve (12) Months from its Scheduled Delivery Date or the Revised Scheduled Delivery Date, as the case may be, it shall be considered as a Seller Event of Default and provisions of Article 11 shall apply.

18.8.3 The Seller shall pay the amount calculated pursuant to Article 4.8.1 to the Procurers within ten (10) days of the earlier of:

c) **the date on which the Seller commences supply of power to the Procurers, or**

d) **expiry of the twelve (12) Months period mentioned in Article 4.8.2.**

18.8.4 If the Seller fails to pay the amount of liquidated damages within the period of ten (10) days as specified in Article 4.8.3, the Procurers shall be entitled to recover the said amount of the liquidated damages by invoking the Contract Performance Guarantee. If the then existing Contract Performance Guarantee is for an amount which is less than the amount of the liquidated damages payable by the Seller to the Procurers under this Article 4.8, then the Seller shall be liable to forthwith pay the balance amount within ten (10) days of the invocation of the Contract Performance Guarantee by the Procurers.

18.8.5 The Parties agree that the formula specified in Article 4.8.1 for calculation of liquidated damages payable by the Seller under this Article 4.8, read with Article 11 is a genuine and accurate pre-estimation of the actual loss that will be suffered by the Procurers in the event of Seller's delay in starting supply of power by the Scheduled Delivery Date or the Revised Scheduled Delivery Date, as the case may be.

### **18.9 *Liquidated Damages for delay due to Procurer Event of Default or Indirect Non Natural Force Majeure Events or Natural Force Majeure Event (affecting the Procurer)***

18.9.1 If the Seller is otherwise ready to commence supply of power and has given due notice, as per provisions of Article 4.1.2, to the Procurers of the date of commencement of power supply, where such date is on or before the Scheduled Delivery Date or Revised Scheduled Delivery Date, as the case may be, but is not able to commence supply of power by the said date specified in the notice, due to a Procurer Event of Default or due to Indirect Non Natural Force Majeure Event or (Natural Force Majeure Event affecting the Procurer) provided such Indirect Non Natural Force Majeure Event or (Natural Force Majeure Event affecting the Procurers) has continued for a period of more than three (3) continuous or non-continuous Months, the Seller shall, until the effects of the Procurer Event of Default or of Indirect Non Natural Force Majeure Event or (Natural Force Majeure Event affecting the Procurers) no longer prevent the Seller from providing supply of power to the Procurers, be deemed to have an Available Capacity equal to the Aggregated Contracted Capacity relevant to that date and to this extent, be deemed to have been providing supply of power with effect from the date notified, and shall be treated as follows:

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- d) In case of delay on account of the Procurer Event of Default, the Procurers shall make payment to the Seller of Capacity Charges in proportion to their Contracted Capacity, calculated on Normative Availability of Contracted Capacity for and during the period of such delay.
- e) *[Insert this para only in case Seller is not a Trading Licensee]* In case of delay due to Indirect Non Natural Force Majeure Event or (Natural Force Majeure Event affecting the Procurers), the Procurers shall make payment to the Seller for Debt Service, subject to a maximum of Capacity Charges calculated on Normative Availability of Contracted Capacity, which is due under the Financing Agreements for the period of such events in excess of three (3) continuous or non-continuous Months.
- f) In case of delay due to Indirect Non Natural Force Majeure Event (or Natural Force Majeure Event affecting the Procurers) or Procurer Event of Default, the Procurers shall be liable to make payments mentioned in (a) and (b) above, after commencement of supply of power, in the form of an increase in Capacity Charges. These amounts shall be paid from the date, being the later of a) the date of cessation of such Indirect Non Natural Force Majeure Event (or Natural Force Majeure Event affecting the Procurers) or Procurer Event of Default and b) *[Insert this line only in case Seller is not a Trading Licensee]* the completion of sixty (60) days from the receipt of the Financing Agreements by the Procurers from the Seller.

Provided such increase in Capacity Charges shall be determined by Appropriate Commission on the basis of putting the Seller in the same economic position as the Seller would have been in case the Seller had been paid amounts mentioned in (b) above in a situation where the Force Majeure Event or Procurer Event of Default had not occurred.

For the avoidance of doubt, it is specified that the charges payable under this Article 4.9.1 shall be paid by the Procurers in proportion to their then Contracted Capacity.

## **18.10** Liquidated Damages for delay due to Direct Non Natural Force Majeure Event

18.10.1 If the Seller is otherwise ready to commence supply of power and has given due notice, as per provisions of Article 4.1.2, to the Procurers of the date of commencement of power supply, where such date is on or before the Scheduled Delivery Date or Revised Scheduled Delivery Date, as the case may be, but is not able to commence supply of power by the said date specified in the notice, due to a Direct Non Natural Force Majeure Event, provided such Direct Non Natural Force Majeure Event has continued for a period of more than three (3) continuous or non-continuous Months, the Seller shall, until the effects of the Direct Non Natural Force Majeure Event no longer prevent the Seller from providing supply of power to the Procurer, be deemed to have an Available Capacity equal to the Contracted Capacity relevant to that date and to this extent, be deemed to

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have been providing supply of power with effect from the date notified, and shall be treated as follows:

- d) ***[Insert this para only in case Seller is not a Trading Licensee]*** In case of delay due to Direct Non Natural Force Majeure not attributable to the Procurers, the Procurers shall make payment for Debt Service, subject to a maximum of Capacity Charges calculated on Normative Availability of Contracted Capacity which are due under the Financing Agreements for the period of such events in excess of three (3) continuous or non-continuous Months.
- e) In case of delay due to Direct Non Natural Force Majeure attributable to the Procurers, the Procurers shall make payment to the Seller of Capacity Charges calculated on Normative Availability of Contracted Capacity for the period of such events in excess of three (3) continuous or non-continuous Months.
- f) In case of delay due to Direct Non Natural Force Majeure Event, the Procurers shall be liable to make payments mentioned in (a) and (b) above, after commencement of supply of power, in the form of an increase in Capacity Charges. These amounts shall be paid from the date, being the later of a) the date of cessation of such Direct Non Natural Force Majeure Event and b) *[Insert this line only in case Seller is not a Trading Licensee]*the completion of sixty (60) days from the receipt of the Financing Agreements by the Procurers from the Seller.

**Provided such increase in Capacity Charges shall be determined by Appropriate Commission on the basis of putting the Seller in the same economic position as the Seller would have been in case the Seller had been paid amounts mentioned in (a) and (b) above in a situation where the Force Majeure Event had not occurred.**

**For the avoidance of doubt, it is specified that the charges payable under this Article 4.10.1 shall be paid by the Procurers in proportion to their then Contracted Capacity.**

**18.11** In every case referred to in Article 4.9.1 and 4.10.1 hereinabove, the Seller shall undertake to commence supply of the Contracted Capacity, relevant to such date, to the Procurers as soon as reasonably practicable [and in no event later than two (2) Weeks or such longer period as mutually agreed between the Seller and the Procurers (jointly) after the point at which it is no longer prevented from doing so by the effects of Force Majeure Events or Procurer Event of Default (as applicable). If the Seller is unable to provide supply of the Contracted Capacity in such a situation, then:

- c) **the Seller shall repay to the Procurers, all sums received by way of Capacity Charge for the deemed supply of power with interest at the same rate as Late Payment Surcharge; and**
- d) **If the Seller fails to provide supply of power to Procurers by the Scheduled Delivery Date or the Revised Scheduled Delivery Date, as the**

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**case may be, it shall also pay liquidated damages to the Procurers calculated in accordance with Article 4.8.**

## **18.12**     Limit on amounts payable due to default

18.12.1 The Parties expressly agree that the Procurers' only liability for any loss of profits or any other loss of any other kind or description whatsoever (except claims for indemnity under Article 12), suffered by the Seller by reason of the Procurers' failure to meet its obligations under Article 4.3.1 shall be to pay the Seller the amounts specified in Article 4.9 and Article 11.

18.12.2 Similarly, Seller's only liability for any loss suffered by the Procurers of any kind or description whatsoever (except claims for indemnity under Article 12), by reason of the Seller's failure to meet its obligation of providing supply of power on the Scheduled Delivery Date or Revised Scheduled Delivery Date(s), as the case may be, shall be as per Article 4.8 and Article 11.

## **18.13**     **Transmission Losses**

18.13.1 Transmission losses from the Interconnection Point onwards would be borne by the Procurers, and power lost on account of transmission loss would be to the account of the Procurers.



**19 ARTICLE 5: CAPACITY, AVAILABILITY AND DISPATCH**

**19.1 Obligation to Supply the Contracted Capacity**

19.1.1 Notwithstanding any Scheduled Outage or Unscheduled Outage of the generating unit(s) and /or of the transmission system, the Seller shall offer for sale the Contracted Capacity to the Procurers at the Interconnection Point and arrange for transmission up to the Injection Point.

**19.2 Allocation of Generation Capacity**

19.2.1 The Seller shall provide ..... percent (.....%) [*Insert number*] of the Power Station’s Net Capacity to the Procurers as per the terms of this Agreement.

**19.3 Availability**

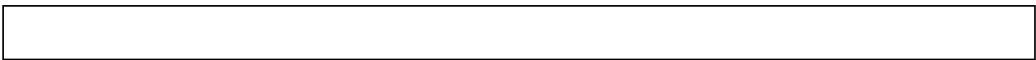
19.3.1 The ..... [*Insert “Seller” if Seller is NOT a Trading Licensee, or insert “Seller shall be responsible to ensure that the Developer” if Seller is a Trading Licensee*] shall comply/complies with the provisions of the applicable Law regarding Availability including, in particular, to the provisions of the ABT and Grid Code relating to declaration of Availability and the matters incidental thereto.

19.3.2 In case the Aggregate Contracted Capacity is a part of the Power Station’s Net Capacity; in the event of declared capacity being less than the sum total of all contracted capacities of the Power Station having duration of contracts in excess of one year, the available capacity to the Procurers for dispatch shall be reduced proportionately. However if the declared capacity exceeds the sum total of all contracted capacities of the Power Station having duration of contracts in excess of one year, the excess capacity will be at the disposal of the Seller.

**19.4 Scheduling and Dispatch**

19.4.1 The ..... [*Insert “Seller” if Seller is NOT a Trading Licensee, or “Seller shall be responsible to ensure that the Developer” if Seller is a Trading Licensee*] shall comply/complies with the provisions of the applicable Law regarding Dispatch Instructions, in particular, to the provisions of the ABT and Grid Code relating to scheduling and Dispatch and the matters incidental thereto.

19.4.2 The Seller further agrees that the Availability entitlement of the Procurers for dispatch over any Settlement Period cannot be offered to any third party other than for conditions under Articles 4.5.2. If the ..... [*Insert “Seller” if Seller is NOT a Trading Licensee, or “Seller or Developer” if Seller is a Trading Licensee*] willfully offers the power meant for dispatch to the Procurers to any third party without complying with the conditions specified in Article 4.5.2, the ..... [*Insert “Seller” if Seller is NOT a Trading Licensee, or “the Seller and Developer” if Seller is a Trading Licensee*] agrees to and acknowledges the Procurers’ right to instruct the RLDC / SLDC, as the case may be, not to schedule such power to any third party, after due approval from the Appropriate Commission.



## 19.5 Demonstration of Power Station's Net Capacity

- 19.5.1 The Procurers (*jointly*) may from time to time during the Operating Period, but only if the Available Capacity with respect to the Procurers has not been one hundred percent (100%) of the Aggregate Contracted Capacity even for one continuous period of at least three (3) hours during any last three (3) continuous months, request the relevant Control Centre to assess the Power Station's Net Capacity. Such capacity assessment of the Power Station, by the Control Centre at the request of the Procurers, shall not be done more than once in a continuous period of six (6) Months.
- 19.5.2 If the Power Station's Net Capacity after such capacity assessment is determined to be less than the sum total of all contracted capacities of the Power Station having duration of contracts in excess of one year, then the provisions of Article 5.6.1 shall apply and the ..... *[Insert "Seller" if Seller is NOT a Trading Licensee, or "Seller or Developer" if Seller is a Trading Licensee]* shall have a right to demonstrate to the satisfaction of the Control Centre the Power Station's Net Capacity only after a period of six (6) Months from the date of such assessment..
- 19.5.3 If the ..... *[Insert "Seller" if Seller is NOT a Trading Licensee, or "Developer" if Seller is a Trading Licensee]* wishes to take any unit of the Power Station or the Power Station, out of service for repair before any assessment by the Control Centre, it shall inform the Control Centre in writing before its scheduled start of the repairs and the estimated time required to complete the repairs. The Parties shall then schedule a maintenance outage in accordance with the Grid Code to enable the Seller to carry out those repairs and in such a case, the Procurers requiring the Control Centre to conduct the assessment, shall defer such assessment until such unit or the Power Station is returned to service following that maintenance outage.

## 19.6 Derating

- 19.6.1 Based on the assessment carried out by the Control Centre, if the Power Station's Assessed Capacity is less than the sum total of all contracted capacities of the Power Station having duration of contracts in excess of one year, the ..... *[Insert "Seller" if Seller is NOT a Trading Licensee, or "Developer" if Seller is a Trading Licensee]* shall not be permitted to declare the Available Capacity of the Power Station at a level greater than its Assessed Capacity, in which case:
- e) **The Power Station's Net Capacity shall be reduced to its most recent Assessed Capacity and Quoted Capacity Charges for the Aggregate Contracted Capacity shall be paid with respect to such reduced Power Station's Net Capacity until the next assessment by the concerned Control Centre.**
  - f) **Further, the Quoted Non-Escalable Capacity Charge shall be reduced by the following:**

**Rs. 0.25/kwh x [1 – (Assessed Capacity of the Power Station)/Power Station's Net Capacity];**

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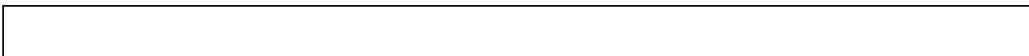


**g) the Aggregate Contracted Capacity of the Procurers shall be reduced proportionately, and the Availability Factor shall be calculated by reference to the reduced Aggregate Contracted Capacity, in each case with effect from date on which all the Procurer(s) jointly first requested the Control Centre to assess the Power Station's Net Capacity.**

**h) *[Insert only in case when Seller is not a Trading Licensee]*the Capital Cost and each element of the Capital Structure Schedule shall be reduced in proportion to the reduction in the Aggregate Contracted Capacity as a result of that derating.**

19.6.2 If at the end of subsequent demonstration of the Power Station's Net Capacity by the Seller at the end of the six Month period referred to in Article 5.5.2, the Assessed Capacity comes out to be still less than the sum total of all contracted capacities of the Power Station having duration of contracts in excess of one year, the consequences mentioned in Article 5.6.1 shall apply on such Assessed Capacity for a period of at least one year from such date of demonstration of the Power Station's Net Capacity after which the Seller shall once again have the right to demonstrate the Power Station's Net Capacity. The consequences mentioned in Article 5.6.1 shall be modified based on the most recent Assessed Capacity of the Power Station.

19.6.3 If the Control Centre is unable to assess the Power Station's Net Capacity because of events or circumstances beyond the ..... *[Insert "Seller's" if Seller is NOT a Trading Licensee, or "Developer's" if Seller is a Trading Licensee]* reasonable control, the Control Centre shall reschedule an assessment as soon as reasonably practicable.



**20**    *ARTICLE 6: METERING*

**20.1** Meters

20.1.1 For installation of Meters, Meter testing, Meter calibration and Meter reading and all matters incidental thereto, the Seller and the Procurers shall follow and be bound by the Central Electricity Authority (Installation and Operation of Meters) Regulations, 2006, the Grid Code and ABT as amended and revised from time to time.



**21 ARTICLE 7: INSURANCES**

**21.1 Insurance**

21.1.1 The ..... [*Insert “Seller” in case Seller is not a Trading Licensee or “Seller shall ensure that Developer” in case Seller is a Trading Licensee*] shall effect and maintain or cause to be effected and maintained during and before the Operating Period, Insurances against such risks, with such deductibles and with such endorsements and co-insured(s), which the Prudent Utility Practices would ordinarily merit maintenance of and as required under the Financing Agreements.

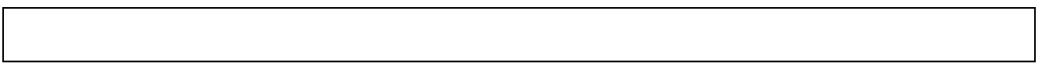
**21.2 Application of Insurance Proceeds**

21.2.1 Save as expressly provided in this Agreement or the Insurances, the proceeds of any insurance claim made due to loss or damage to the Power Station or any part of the Power Station shall be first applied to reinstatement, replacement or renewal of such loss or damage.

21.2.2 If a Natural Force Majeure Event renders the Power Station no longer economically and technically viable and the insurers under the Insurances make payment on a “total loss” or equivalent basis, the Procurers shall have no claim on such proceeds of such Insurance.

**21.3 Effect on liability of the Procurers**

21.3.1 Notwithstanding any liability or obligation that may arise under this Agreement, any loss, damage, liability, payment, obligation or expense which is insured or for which the ..... [*Insert “Seller” if Seller is NOT a Trading Licensee, or “Seller and Developer” if Seller is a Trading Licensee*] can claim compensation, under any Insurance shall not be charged to or payable by the Procurers.



**22**    *ARTICLE 8: BILLING AND PAYMENT*

**22.1** General

22.1.1 From the commencement of supply of power, Procurers shall pay the Seller the monthly Tariff Payment, on or before the Due Date, comprising of Tariff for every Contract Year, determined in accordance with this Article 8 and Schedule 4. All Tariff Payments by the Procurers shall be in Indian Rupees.

Provided however, if the Procurers avails of any Infirm Power from the Power Station, then Procurers shall be liable to pay only Energy Charges (as applicable for the Contract Year in which the Infirm Power is supplied or next Contract Year in case no Energy Charges are mentioned for such Contract Year), for any Infirm Power generated by any unit of the Power Station. The quantum of Infirm Power generated shall be computed from the energy accounting and audit meters installed at the Power Station as per Central Electricity Authority (Installation and Operation of Meters) Regulations 2006 as amended from time to time.

**22.2** Delivery and Content of Monthly Bills/Provisional Bills

22.2.1 The Seller shall issue to each Procurer a signed Monthly Bill for the immediately preceding Month not later than ten (10) days of the next Month. In case the Monthly Bill for the immediately preceding Month is issued after ten (10) days of the next Month, the Due Date for payment of such Monthly Bill shall be extended by thirty (30) days.

Provided that:

- c. if the date of commencement of supply of power falls during the period between the first (1st) day and up to and including the fifteenth (15th) day of a Month, the first Monthly Bill shall be issued for the period until the last day of such Month, or
- d. if the date of commencement of supply of power falls after the fifteenth (15th) day of a Month, the first Monthly Bill shall be issued for the period commencing from the Delivery Date until the last day of the immediately following Month.

Provided further that if a Monthly Bill is received on or before the second (2nd) day of a Month, it shall be deemed to have been received on the second (2nd) Business Day of such Month.

22.2.2 Each Monthly Bill and Provisional Bill shall include:

- iv. Availability and REA for the relevant Month for Monthly Bill and RLDC's daily energy account for Provisional Bill;
- v. the Seller's computation of various components of the monthly Tariff Payment in accordance with Schedule 4; and
- vi. supporting data, documents and calculations in accordance with this Agreement.



## 22.3 Payment of Monthly Bills

22.3.1 The Procurers shall pay the amount payable under the Monthly Bill on the Due Date to such account of the Seller, as shall have been previously notified by the Seller in accordance with Article 8.3.4 below.

22.3.2 All payments made by the Procurer(s) shall be appropriated by the Seller in the following order of priority:

- iv) towards Late Payment Surcharge, if any;
- v) towards the earlier unpaid Monthly Bill(s), if any; and
- vi) towards the then current Monthly Bill.

22.3.3 All payments required to be made under this Agreement shall only include any deduction or set off for:

- iii) deductions required by the Law; and
- iv) amounts claimed by the Procurer(s) from the Seller, through an invoice duly acknowledged by the Seller, to be payable by the Seller, and not disputed by the Seller within thirty (30) days of receipt of the said Invoice and such deduction or set-off shall be made to the extent of the amounts not disputed. It is clarified that the Procurer(s) shall be entitled to claim any set off or deduction under this Article, after expiry of the said thirty (30) Days period.

Provided further, the maximum amounts that can be deducted or set-off by all the Procurers taken together under this Article in a Contract Year shall not exceed Rupees ..... [*Insert amount calculated as Rs. 2.5 lakhs per MW of Contracted Capacity*] only, except under sub Article (i) above.

22.3.4 The Seller shall open a bank account at ..... [*Insert name of place*] (the "Seller's Designated Account") for all Tariff Payments to be made by Procurers to the Seller, and notify Procurers of the details of such account at least ninety (90) Days before the dispatch of the first Monthly Bill. Procurers shall also designate a bank account at ..... [*Insert name of place*] (the "Procurer's Designated Account") for payments to be made by the Seller (including Supplementary Bills) to Procurers and notify the Seller of the details of such account ninety (90) Days before the Scheduled Delivery Date. The Procurers and the Seller shall instruct their respective bankers to make all payments under this Agreement to the Seller's Designated Account or the Procurer's Designated Account, as the case may be, and shall notify either Party of such instructions on the same day.

22.3.5 In the event of delay in payment of a Monthly Bill by the Procurers beyond its Due Date, a Late Payment Surcharge shall be payable by such Procurers to the Seller at the rate of two percent (2%) in excess of the applicable SBAR per annum, on the amount of outstanding payment, calculated on a day to day basis (and compounded with monthly



rest), for each day of the delay. The Late Payment Surcharge shall be claimed by the Seller through the Supplementary Bill.

22.3.6 For payment of any Bill before Due Date, the following Rebate shall be paid by the Seller to the Procurer in the following manner. *[Note: These Rebate rates along with the slabs can be changed and decided by the Procurer at the time of issuing the RFP Documents]*

- j) The Provisional Bill shall be raised by the Seller on the last Business Day of the Month where the Capacity Charges shall be based on the Declared Capacity for the entire Month and the Energy Charges shall be based on the final implemented Scheduled Energy up to 25th day of the Month. Rebate shall be payable at the rate of two point two five percent (2.25%) of the amount (which shall be the full amount due under the Provisional Bill) credited to Seller’s account on first day of the Month and Rebate amount shall reduce at the rate of zero point zero five percent (0.05%) for each day, up to fifth (5th) day of the Month.
- k) Applicable rate of Rebate at (a) above shall be based on the date on which payment has been actually credited to the Seller’s account. Any delay in transfer of money to the Seller’s account, on account of public holiday, bank holiday or any other reasons shall be to the account of the Procurers.
- l) Two percent (2%) Rebate shall be provided for credit of payment to the Seller’s account made within one (1) day of the presentation of Monthly Bill for the Month for which the Provisional Bill was raised earlier.
- m) For credit to Seller’s account made on other days the Rebate on Monthly Bill shall be as under:

<b>Number of days before Due Date of Monthly Bill</b>	<b>Rate of Rebate applicable</b>
	Two percent (2.00%)
From the sixth (6th) day thereafter up to the Due Date	Two percent (2%) less [0.033% x {29 less number of days before Due Date when the payment is made by the Procurer(s)}]

In case of presentation of Monthly Bill beyond the sixth (6th) day of the Month, two percent (2%) Rebate will be applicable only on the day of presentation of Monthly Bill and beyond that Rebate will be applicable as per the table above.

- n) Rebate of two point two five percent (2.25%) to two point zero five percent (2.05%) will be available to those Procurers who credit one hundred percent (100%) of the Provisional Bill within first five (5) days of the Month to Seller’s account/ designated account and balance amount, if any, based on Monthly Bill (as per REA) within the Month.

- o) In the event only part amount of Provisional Bill is credited to the Seller's account, within first five (5) days and the balance amount is credited to the Sellers account during other days of the Month, Rebate will be paid on such part amount, at the rate of two percent (2%) plus zero point zero three three percent (0.033%) per day for the number of days earlier than the 6th day when such part amount is credited to the Sellers' account;
- p) The above Rebate will be allowed only to the Procurers who credit to the Seller's account the full Monthly Bill.
- q) No Rebate shall be payable on the Bills raised on account of Change in Law relating to taxes, duties and cess;
- r) If the Provisional Bill has not been paid by the date of receipt of the Monthly Bill then such Provisional Bill shall not be payable, provided in case the Provisional Bill has already been paid, then only the difference between the Monthly Bill and Provisional Bill shall be payable.

## 22.4 Payment Mechanism

### Letter of Credit:

22.4.1 The Procurers shall provide to the Seller, in respect of payment of its Monthly Bills and/or Supplementary Bills, a monthly unconditional, revolving and irrevocable letter of credit ("Letter of Credit"), opened and maintained by the Procurers, which may be drawn upon by the Seller in accordance with this Article. The Procurers shall provide the Seller draft of the Letter of Credit proposed to be provided to the Seller six (6) Months before the Scheduled Delivery Date or Revised Scheduled Delivery Date, as the case may be. Further, the Letter of Credit shall be provided from the bank which is appointed as Default Escrow Agent under the Default Escrow Agreement.

22.4.2 Not later than one (1) Month before the Scheduled Delivery Date or Revised Scheduled Delivery Date, as the case may be, the Procurers shall through a scheduled bank at ..... [Identified Place(s)] open a Letter of Credit in favour of the Seller, to be made operative from a date prior to the Due Date of its first Monthly Bill under this Agreement. The Letter of Credit shall have a term of twelve (12) Months and shall be renewed annually, for an amount equal to:

- iii) for the first Contract Year, equal to one point one (1.1) times the estimated average monthly billing based on Normative Availability;
- iv) for each subsequent Contract Year, equal to the one point one (1.1) times the average of the monthly Tariff Payments of the previous Contract Year.

Provided that the Seller shall not draw upon such Letter of Credit prior to the Due Date of the relevant Monthly Bill and/or Supplementary Bill, and shall not make more than one drawal in a Month.

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Provided further that if at any time, such Letter of Credit amount falls short of the amount specified in Article 8.4.2 otherwise than by reason of drawal of such Letter of Credit by the Seller, the Procurer/relevant Procurer shall restore such shortfall within seven (7) days.

22.4.3 The Procurers shall cause the scheduled bank issuing the Letter of Credit to intimate the Seller, in writing regarding establishing of such irrevocable Letter of Credit.

22.4.4 In case of drawal of the Letter of Credit by the Seller, in accordance with Article 8.4, the amount of the Letter of Credit shall be reinstated in accordance with the terms of Article 8.4.11.3.

22.4.5 If the Procurer(s) fails to pay a Monthly Bill or Supplementary Bill or part thereof within and including the Due Date, then, subject to Article 8.6.7, the Seller may draw upon the Letter of Credit, and accordingly the bank shall pay without any reference or instructions from the Procurer, an amount equal to such Monthly Bill or Supplementary Bill or part thereof plus Late Payment Surcharge, if applicable, in accordance with [Article 8.3.5](#) above, by presenting to the scheduled bank issuing the Letter of Credit, the following documents:

- iv) a copy of the Monthly Bill or Supplementary Bill which has remained unpaid by the Procurer;
- v) a certificate from the Seller to the effect that the bill at item (i) above, or specified part thereof, is in accordance with the Agreement and has remained unpaid beyond the Due Date; and
- vi) calculations of applicable Late Payment Surcharge, if any.

22.4.6 Further, on the occurrence of such an event as envisaged herein, the Seller shall immediately inform all the Procurers of the said failure of the Procurer to pay the Monthly Bill or Supplementary Bill or part thereof and shall send regular updates to all the Procurers, which shall not be less than one (1) day in every week, containing details of the amount claimed by the Seller as per the provisions of this Article and payments made by the Procurer pursuant to such claim.

22.4.7 The Procurers shall ensure that the Letter of Credit shall be renewed not later than forty five (45) days prior to its expiry.

22.4.8 All costs relating to opening and maintenance of the Letter of Credit shall be borne by the Procurers, however, Letter of Credit negotiation charges shall be borne and paid by the Seller.

22.4.9 Where necessary, the Letter of Credit may also be substituted by an unconditional and irrevocable bank guarantee or an equivalent instrument as mutually agreed by the Procurers and the Seller.

22.4.10 Upon fulfilment of the conditions mentioned under Article 8.4.11.2 the Letter of Credit amount as mentioned in Article 8.4.2 shall be changed to one (1) time the average of the Monthly Tariff Payments of the previous Contract Year instead of one point one (1.1) times the average of the Monthly Tariff Payments of the previous Contract Year.





#### 22.4.11 Collateral Arrangement

22.4.11.1 As a further support for the Procurers' obligations, on or prior to the Effective Date, the Procurers, the Seller and the default escrow agent shall execute separate Default Escrow Agreement (referred as "Default Escrow Agreement") for the establishment and operation of the Default Escrow Account in favour of the Seller, through which the revenues of the relevant Procurer shall be routed and used as per the terms of the Default Escrow Agreement. The Procurers, default escrow agent and the Seller shall contemporaneously with the execution of the Default Escrow Agreements enter into separate Agreements to Hypothecate Cum Deed of Hypothecation, whereby the Procurers shall agree to hypothecate, to the Seller, effective from forty five (45) days prior to the Scheduled Delivery Date or Revised Scheduled Delivery Date, as the case maybe, the amounts to the extent as required for the Letter of Credit as per Article 8.4.2 routed through the Default Escrow Accounts and the Receivables in accordance with the terms of the Agreement to Hypothecate Cum Deed of Hypothecation. The Default Escrow Agreements and the Agreements to Hypothecate Cum Deed of Hypothecation are collectively referred to as the "Collateral Arrangements". The minimum revenue flow in any Month in the Default Escrow Account(s) shall be at least equal to the amount required for the Letter of Credit as per Article 8.4.2.

Provided that the Procurers shall ensure that the Seller has first ranking charge on the revenues routed through the Default Escrow Accounts and the 'Receivables' in accordance with the terms of the Agreements to Hypothecate Cum Deed of Hypothecation. However, such first ranking charge shall be on the amounts, in excess of amounts, which have already been charged or agreed to be charged prior to the date of the execution of the Default Escrow Agreements.

22.4.11.2 On the occurrence of all of the following events in respect of a Procurer:

- iv. A period of not less than twenty-four (24) Months from Delivery Date, has elapsed; and
- v. The Procurer has achieved, for its ability to honour its Tariff Payment obligations to the Seller under this Agreement, a credit rating of 'A' or better, from a SEBI registered Indian credit rating agency, consistently for a period of at least three (3) years; and
- vi. Immediately prior to the three (3) year period mentioned in sub-article (ii) above, for a period of at least twelve (12) Months there has been no Procurer Event of Default under Article 11 of this Agreement,

the Procurer shall intimate the Seller in writing of the occurrence of the same and its intention to discontinue the Collateral Arrangement. If the Seller desires to continue with the Collateral Arrangement, it shall intimate the same to the Procurers in writing within thirty (30) days of receipt of intimation from the Procurers and in such case the Seller shall be liable to bear the costs of continuation of the Collateral Arrangement with

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effect from such date. In case the Seller fails to respond or agrees to discontinue, the Collateral Arrangement shall forthwith cease and the Default Escrow Agreements and the Agreements to Hypothecate Cum Deed of Hypothecation shall stand terminated as per terms thereof.

Provided that in case of any of conditions mentioned under (i), (ii) or (iii) in Article 8.4.11.2 ceases to be true, then within ninety (90) days of the occurrence of such event, the Procurer shall reinstate the Collateral Arrangement, at its own cost.

22.4.11.3 If the Letter of Credit is insufficient to pay for the due payments to the Seller or is not replenished for the drawals made, then within a period of seven (7) days from the date such shortfall in the Letter of Credit occurs, the Letter of Credit shall be reinstated to the requisite amount specified in this Agreement, and in the manner specified in the Default Escrow Agreement.

## **22.5 Third Party Sales on Default**

22.5.1 Upon the occurrence of an event where the Procurers have not made payment by the Due Date of an Invoice through the Payment Mechanism provided in Article 8.4 of this Agreement, the Seller shall follow the steps as enumerated in Articles 8.5.2 and 8.5.4.

22.5.2 On the occurrence of the event mentioned in Article 8.5.1 and after giving a notice of at least seven (7) days to the defaulting Procurer(s), the Seller shall have the obligation to offer twenty five (25) per cent of the Contracted Capacity pertaining to such defaulting Procurer(s) (“Default Electricity”) to the other non-defaulting Procurers. The non defaulting Procurers have the right to receive the whole or any part of such Default Electricity by giving a notice within a further two (2) Business Days, in the following manner

- c) In ratios equal to their then existing Contracted Capacities at the same Tariff as would have been applicable to the defaulting Procurer. Provided that, if any of the non-defaulting Procurers does not elect to receive the Default Electricity so offered, the Seller shall offer the balance of the Default Electricity to other non-defaulting Procurer(s) at the same Tariff in proportion to their additional requirement as intimated.
- d) At a lower Tariff as may be specified by non-defaulting Procurer(s) to the extent of their capacity requirements, in descending order of the Tariff. Provided that, the Seller has the right to obtain tariff quotes from third party(s) for sale of Default Electricity not requisitioned under (a) above. The tariff quotes received from the non-defaulting Procurer(s) and such third party(s) shall be ranked in descending order of the tariff and the Seller shall sell Default Electricity in such descending order and in compliance with Article 8.5.3, to the extent applicable.

In case of both (a) and (b) above if non-defaulting Procurer(s) receive Default Electricity, then, subject to applicability of Article 8.4.11.2 of this Agreement, such non defaulting

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Procurer(s) shall within seven (7) days of exercising the right of election, either open an additional Letter of Credit/ enhance the existing Letter of Credit in accordance with the principles set forth in Article 8.4 **or** increase the value of escrow cover under the Default Escrow Agreement and related security under Agreement to Hypothecate cum deed of Hypothecation to secure payment for that part of the Default Electricity as such non-defaulting Procurer elects to receive.

Provided further that if the non-defaulting Procurer(s) continue to receive Default Electricity for period more than two(2) months then within two (2) Months of election by the non-defaulting Procurer(s) as mentioned above, unless the event outlined in Article 8.5.8 has occurred, such Procurer(s) shall open a Letter of Credit/enhance the existing Letter of Credit in accordance with the principles set forth in Article 8.4 **and** shall increase the value of escrow cover under the Default Escrow Agreement and related Agreement to Hypothecation cum Deed of Hypothecation. Provided that in case the events mentioned in Article 8.4.11.2 (i), (ii) and (iii) are true, then the requirement with respect to Default Escrow Agreement and Agreement to Hypothecate cum Deed of Hypothecation in this Article 8.5.2 shall be applicable as per Article 8.4.11.2.

22.5.3 If all the non defaulting Procurers do not make the election to receive the Default Electricity or a part thereof, within two (2) Business Days of it being so offered under Article 8.5.2, or all such non-defaulting Procurers expressly waive their first right to receive the same, the Seller shall have the right (but not the obligation) to make available and sell the Default Electricity or a part thereof to a third party, namely:

- c) any consumer, subject to applicable Law; or
- d) any licensee under the Electricity Act, 2003;

22.5.4 If the Collateral Arrangement is not fully restored by the defaulting Procurer within thirty (30) days of the non-payment by the defaulting Procurer of an Invoice by its Due Date, the provisions of Article 8.5.2 or Article 8.5.2 (as the case may be) and Article 8.5.3 shall apply with respect to one hundred per cent (100%) of the Contracted Capacity. Provided that in case the events mentioned in Article 8.4.11.2 (i), (ii) and (iii) are true, then this Article 8.5.4 shall be applicable.

22.5.5 In the case of Article 8.5.3 or 8.5.4, the Seller shall ensure that sale of power to the shareholder(s) of the Seller or to any direct or indirect Affiliate of the Seller/ the shareholder(s) of the Seller is not at a price less than the Energy Charges.

22.5.6 In case of third party sales or sales to any other non-defaulting Procurers as permitted by this Article 8.5, the adjustment of the surplus revenue over Energy Charge (applicable to the defaulting Procurer) attributable to such Default Electricity sold, shall be adjusted as under :

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- c) the surplus up to the Tariff shall be used towards the extinguishment of the subsisting payment liability of the defaulting Procurer towards the Seller; and
- d) the surplus if any above the Tariff shall be retained by the Seller.

22.5.7 The liability of the defaulting Procurers towards making Capacity Charge payments to the Seller even for Default Electricity sold to third parties or other non- defaulting Procurers or remaining unsold during such periods will remain unaffected.

Provided such Capacity Charge payment liability shall cease on the date which occurs on the expiry of a period of ..... [*Insert period*] from the date of occurrence of a Procurer Event of Default under Article 11.2.1 (i), provided if prior to such date, such Procurer Event of Default has not ceased and regular supply of power for a period of at least ninety (90) continuous Days has not occurred.

22.5.8 Sales to any person or Party, other than the defaulting Procurer under Article 8.5, shall cease and regular supply of power to the defaulting Procurer in accordance with the provisions of this Agreement shall commence and be restored on the later of the two following dates or any date before this date at the option of Seller:

- c) the day on which the defaulting Procurer pays the amount due to the Seller and renews the Letter of Credit and restores Default Escrow Account (if applicable) as mentioned in Article 8.4.11.1; or
- d) the date being "x" days from the date on which the defaulting Procurer pays the amount due to the Seller, where "x" days shall be calculated in accordance with Schedule 2.

## 22.6 Disputed Bill

22.6.1 If a Party does not dispute a Monthly Bill, Provisional Bill or a Supplementary Bill raised by the other Party by the Due Date, such Bill shall be taken as conclusive.

22.6.2 If a Party disputes the amount payable under a Monthly Bill, Provisional Bill or a Supplementary Bill, as the case may be, that Party shall, within thirty (30) days of receiving such Bill, issue a notice (the "Bill Dispute Notice") to the invoicing Party setting out:

- iv) the details of the disputed amount;
- v) its estimate of what the correct amount should be; and
- vi) all written material in support of its claim.

22.6.3 If the invoicing Party agrees to the claim raised in the Bill Dispute Notice issued pursuant to Article 8.6.2, the invoicing Party shall revise such Bill within seven (7) days of receiving the Bill Dispute Notice. The disputing Party shall thereafter within seven (7) Days of receiving the revised Bill from the invoicing Party, make the payment thereunder, and if the disputing Party has already made the excess payment, the invoicing

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Party shall refund to the disputing Party such excess amount within fifteen (15) days of receiving the Bill Dispute Notice. In such a case excess amount shall be refunded along with interest at the same rate as Late Payment Surcharge, which shall be applied from the date on which such excess payment was made by the disputing Party to the invoicing Party and up to and including the date on which such payment has been received as refund.

22.6.4 If the invoicing Party does not agree to the claim raised in the Bill Dispute Notice issued pursuant to Article 8.6.2, it shall, within fifteen (15) days of receiving the Bill Dispute Notice, furnish a notice (Bill Disagreement Notice) to the disputing Party providing:

- iv) reasons for its disagreement;
- v) its estimate of what the correct amount should be; and
- vi) all written material in support of its counter-claim.

22.6.5 Upon receipt of the Bill Disagreement Notice by the disputing Party under Article 8.6.4, authorized representative(s) or a director of the board of directors/ member of board of the disputing Party and the invoicing Party shall meet and make best endeavours to amicably resolve such dispute within fifteen (15) days of receipt of the Bill Disagreement Notice.

22.6.6 If the Parties do not amicably resolve the Dispute within fifteen (15) days of receipt of Bill Disagreement Notice pursuant to Article 8.6.4, the matter shall be referred to Dispute resolution in accordance with Article 14.

22.6.7 In case of Disputed Bills, it shall be open to the aggrieved Party to approach the Appropriate Commission for Dispute resolution in accordance with Article 14 and also for interim orders protecting its interest including for orders for interim payment pending Dispute resolution and the Parties shall be bound by the decision of the Appropriate Commission, including in regard to interest or Late Payment Surcharge, if any directed to be paid by the Appropriate Commission.

22.6.8 If a Dispute regarding a Monthly Bill, Provisional Bill or a Supplementary Bill is settled pursuant to Article 8.6 or by the Dispute resolution mechanism provided in this Agreement in favour of the Party that issues a Bill Dispute Notice, the other Party shall refund the amount, if any incorrectly charged and collected from the disputing Party or pay as required, within five (5) days of the Dispute either being amicably resolved by the Parties pursuant to Article 8.6.5 or settled by Dispute resolution mechanism along with interest at the same rate as Late Payment Surcharge from the date on which such payment had been made to the invoicing Party or the date on which such payment was originally due, as may be applicable.

22.6.9 For the avoidance of doubt, it is clarified that despite a Dispute regarding an Invoice, the Procurers shall, without prejudice to its/ their right to Dispute, be under an obligation to make payment, of the lower of (a) an amount equal to simple average of last three (3) Months Invoices (being the undisputed portion of such three Months' invoices) and (b) Monthly Invoice which is being disputed, provided such Monthly Bill has been raised based on the REA and in accordance with this Agreement.



## 22.7 Quarterly and Annual Reconciliation

- 22.7.1 The Parties acknowledge that all payments made against Monthly Bills, Provisional Bills and Supplementary Bills shall be subject to quarterly reconciliation at the beginning of the following quarter of each Contract Year and annual reconciliation at the end of each Contract Year to take into account REA, Tariff adjustment payments, Tariff Rebate, Late Payment Surcharge, or any other reasonable circumstance provided under this Agreement.
- 22.7.2 The Parties, therefore, agree that as soon as all such data in respect of any quarter of a Contract Year or a full Contract Year as the case may be has been finally verified and adjusted, the Seller and Procurers shall jointly sign such reconciliation statement. Within fifteen (15) days of signing of a reconciliation statement, the Seller or Procurers, as the case may be, shall raise a Supplementary Bill for the Tariff adjustment payments for the relevant quarter/ Contract Year and shall make payment of such Supplementary Bill for the Tariff adjustment payments for the relevant quarter/ Contract Year, as may be due as a result of such reconciliation. Late Payment Surcharge/ interest shall be payable in such a case from the date on which such payment had been made to the invoicing Party or the date on which any payment was originally due, as may be applicable. Any Dispute with regard to the above reconciliation shall be dealt with in accordance with the provisions of Article 14.

## 22.8 Payment of Supplementary Bill

22.8.1 Either Party may raise a bill on the other Party ("Supplementary Bill") for payment on account of:

- iv) Adjustments required by the Regional Energy Account (if applicable);
- v) Tariff Payment for change in parameters, pursuant to provisions in Schedule 4; or
- vi) Change in Law as provided in Article 10,

and such Supplementary Bill shall be paid by the other Party.

22.8.2 The Procurers shall remit all amounts due under a Supplementary Bill raised by the Seller to the Seller's Designated Account by the Due Date and notify the Seller of such remittance on the same day or the Seller shall be eligible to draw such amounts through the Letter of Credit. Similarly, the Seller shall pay all amounts due under a Supplementary Bill raised by Procurer(s) by the Due Date to concerned Procurer's designated bank account and notify such Procurer(s) of such payment on the same day. For such payments by the Procurer(s), Rebate as applicable to Monthly Bills pursuant to Article 8.3.6 shall equally apply.

22.8.3 In the event of delay in payment of a Supplementary Bill by either Party beyond its Due Date, a Late Payment Surcharge shall be payable at the same terms applicable to the Monthly Bill in Article 8.3.5.

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***22.9 The copies of all notices/ offers which are required to be sent as per the provisions of this Article 8, shall be sent by a Party, simultaneously to all Parties.***

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**23 ARTICLE 9 : FORCE MAJEURE**

**23.1 Definitions**

23.1.1 In this Article, the following terms shall have the following meanings:

**23.2 Affected Party**

23.2.1 An affected Party means any of the Procurers or the ..... *[Insert "Seller" if Seller is NOT a Trading Licensee, or insert "Developer" if Seller is a Trading Licensee]* whose performance has been affected by an event of Force Majeure.

23.2.2 [An event of Force Majeure affecting the CTU/ STU or any other agent of the Seller, which has affected the transmission facilities from the Power Station to the Delivery Point, shall be deemed to be an event of Force Majeure affecting Seller.

23.2.3 Any event of Force Majeure affecting the performance of the ..... *[Insert "Seller's" if Seller is NOT a Trading Licensee, or "Developer's" if Seller is a Trading Licensee]* contractors shall be deemed to be an event of Force Majeure affecting Seller only if the Force Majeure event is affecting and resulting in:

- c) late delivery of plant, machinery, equipment, materials, spare parts, Fuel, water or consumables for the Power Station; or
- d) a delay in the performance of any of the ..... *[Insert "Seller's" if Seller is NOT a Trading Licensee, or "Developer's" if Seller is a Trading Licensee]* contractors.

23.2.4 Similarly, any event of Force Majeure affecting the performance of the Procurers' contractor for setting up or operating Interconnection Facilities shall be deemed to be an event of Force Majeure affecting Procurer(s) only if the Force Majeure event is resulting in a delay in the performance of Procurer's contractors.

**23.3 Force Majeure**

23.3.1 A 'Force Majeure' means any event or circumstance or combination of events and circumstances including those stated below that wholly or partly prevents or unavoidably delays an Affected Party in the performance of its obligations under this Agreement, but only if and to the extent that such events or circumstances are not within the reasonable control, directly or indirectly, of the Affected Party and could not have been avoided if the Affected Party had taken reasonable care or complied with Prudent Utility Practices:

**i. Natural Force Majeure Events**

act of God, including, but not limited to lightning, drought, fire and explosion (to the extent originating from a source external to the site), earthquake, volcanic eruption, landslide, flood, cyclone, typhoon, tornado, or exceptionally adverse weather conditions which are in excess of the statistical measures for the last hundred (100) years,





**ii. Non-Natural Force Majeure Events**

1. Direct Non-Natural Force Majeure Events attributable to the Procurer(s)

- a) Nationalization or compulsory acquisition by any Indian Governmental Instrumentality (under the State Government of the Procurers or the Central Government of India) of any material assets or rights of the Seller; or
- b) the unlawful, unreasonable or discriminatory revocation of, or refusal to renew, any Consents, Clearances and Permits required by the Seller to perform its obligations under the RFP Documents or any unlawful, unreasonable or discriminatory refusal to grant any Consents, Clearances and Permits required for the development/ operation of the Power Station , provided that a Competent Court of Law declares the revocation or refusal to be unlawful, unreasonable and discriminatory and strikes the same down.
- c) any other unlawful, unreasonable or discriminatory action on the part of an Indian Government Instrumentality (under the State Government of the Procurers or the Central Government of India) which is directed against the supply of power by the Seller to the Procurers, provided that a Competent Court of Law declares the action to be unlawful, unreasonable and discriminatory and strikes the same down.

2. Direct Non-Natural Force Majeure Events not attributable to the Procurer(s)

- a) Nationalization or compulsory acquisition by any Indian Governmental Instrumentality (other than those under the State Government of the Procurers) of any material assets or rights of the Seller; or
- b) the unlawful, unreasonable or discriminatory revocation of, or refusal to renew, any Consents, Clearances and Permits required by Seller to perform its obligations under the RFP Documents or any unlawful, unreasonable or discriminatory refusal to grant any Consents, Clearances and Permits required for the development / operation of the Power Station , provided that a Competent Court of Law declares the revocation or refusal to be unlawful, unreasonable and discriminatory and strikes the same down.
- c) any other unlawful, unreasonable or discriminatory action on the part of an Indian Government Instrumentality (other than those under the State Government of the Procurers or the Central Government of India) which is directed against the supply of



power by the Seller to the Procurers, provided that a Competent Court of Law declares the action to be unlawful, unreasonable and discriminatory and strikes the same down.

### 3. Indirect Non-Natural Force Majeure Events

- a) any act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo;, revolution, riot, insurrection, terrorist or military action; or
- b) radio active contamination or ionising radiation originating from a source in India or resulting from another Indirect Non Natural Force Majeure Event mentioned above excluding circumstances where the source or cause of contamination or radiation is brought or has been brought into or near the Power Station by the Affected Party or those employed or engaged by the Affected Party.
- c) Industry wide strikes and labor disturbances having a nationwide impact in India.

## 23.4 Force Majeure Exclusions

23.4.1 Force Majeure shall not include (i) any event or circumstance which is within the reasonable control of the Parties and (ii) the following conditions, except to the extent that they are consequences of an event of Force Majeure:

- g. Unavailability, late delivery, or changes in cost of the plant, machinery, equipment, materials, spare parts, Fuel or consumables for the Power Station;**
- h. Delay in the performance of any contractor, sub-contractor or their agents excluding the conditions as mentioned in Article 9.2;**
- i. Non-performance resulting from normal wear and tear typically experienced in power generation materials and equipment;**
- j. Strikes or labour disturbance at the facilities of the Affected Party;**
- k. Insufficiency of finances or funds or the agreement becoming onerous to perform; and**
- l. Non-performance caused by, or connected with, the Affected Party's:**
  - i. Negligent or intentional acts, errors or omissions;**
  - ii. Failure to comply with an Indian Law; or**
  - iii. Breach of, or default under this Agreement or any other RFP Documents.**

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## 23.5 Notification of Force Majeure Event

23.5.1 The Affected Party shall give notice to the other Party of any event of Force Majeure as soon as reasonably practicable, but not later than seven (7) days after the date on which such Party knew or should reasonably have known of the commencement of the event of Force Majeure. If an event of Force Majeure results in a breakdown of communications rendering it unreasonable to give notice within the applicable time limit specified herein, then the Party claiming Force Majeure shall give such notice as soon as reasonably practicable after reinstatement of communications, but not later than one (1) day after such reinstatement.

Provided that such notice shall be a pre-condition to the Affected Party's entitlement to claim relief under this Agreement. Such notice shall include full particulars of the event of Force Majeure, its effects on the Party claiming relief and the remedial measures proposed. The Affected Party shall give the other Party regular (and not less than monthly) reports on the progress of those remedial measures and such other information as the other Party may reasonably request about the Force Majeure Event.

23.5.2 The Affected Party shall give notice to the other Party of (i) the cessation of the relevant event of Force Majeure; and (ii) the cessation of the effects of such event of Force Majeure on the performance of its rights or obligations under this Agreement, as soon as practicable after becoming aware of each of these cessations.

## 23.6 Duty to Perform and Duty to Mitigate

23.6.1 To the extent not prevented by a Force Majeure Event pursuant to Article 9.3, the Affected Party shall continue to perform its obligations pursuant to this Agreement. The Affected Party shall use its reasonable efforts to mitigate the effect of any Force Majeure Event as soon as practicable.

## 23.7 Available Relief for a Force Majeure Event

23.7.1 Subject to this Article 9:

- (a) no Party shall be in breach of its obligations pursuant to this Agreement except to the extent that the performance of its obligations was prevented, hindered or delayed due to a Force Majeure Event;
- (b) every Party shall be entitled to claim relief in relation to a Force Majeure Event in regard to its obligations, including but not limited to those specified under Article 4.7;
- (c) For the avoidance of doubt, it is clarified that no Tariff shall be paid by the Procurers for the part of Contracted Capacity or part thereof affected by a Natural Force Majeure Event affecting the .....  
*[Insert "Seller" if Seller is NOT a Trading Licensee, or insert*

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“Developer” if Seller is a Trading Licensee], for the duration of such Natural Force Majeure Event affecting the ..... [Insert “Seller” if Seller is NOT a Trading Licensee, or insert “Developer” if Seller is a Trading Licensee]. For the balance part of the Contracted Capacity, the Procurer(s) shall pay the Tariff to the Seller, provided during such period of Natural Force Majeure Event affecting the ..... [Insert “Seller” if Seller is NOT a Trading Licensee, or insert “Developer” if Seller is a Trading Licensee], the balance part of the Power Station is declared to be Available for scheduling and dispatch as per ABT for supply of power by the Seller to the Procurers;

In case of a Natural Force Majeure Event affecting the Procurers no Tariff shall be paid by the Procurer to the Seller for the duration of such Natural Force Majeure Event affecting the Procurers ;

(d) [Insert in the case of long term procurement and when the Seller is not a Trading Licensee] If the average Availability of the Power Station is reduced below eighty percent (80%) of Normative Availability for over two (2) consecutive months or for any non consecutive period of four (4) months both within any continuous period of 60 Months [Procurer to insert number of months, based on the duration for procurement] Months, as a result of an Indirect Non Natural Force Majeure Event, then, with effect from the end of such two (2) consecutive months or four (4) non consecutive months so long as the daily average Availability of the Power Station continues to be reduced below eighty percent (80%) of Normative Availability as a result of an Indirect Non Natural Force Majeure Event of any kind, the Procurers shall make payments for Debt Service, subject to a maximum of Capacity Charges based on Normative Availability which are due under the Financing Agreements and these amounts shall be paid from the date, being the later of a) the date of cessation of such Indirect Non Natural Force Majeure Event and b) the completion of sixty (60) days from the receipt of the Financing Agreements by the Procurers from the Seller, in the form of an increase in Capacity Charge.

Provided payments for such Debt Service shall be limited to the Debt Service proportional to the Contracted Capacity of the Procurers from the Power Station.

Provided such Capacity Charge increase shall be determined by Appropriate Commission the basis of putting the Seller in the same economic position as the Seller would have been in case the Seller had been paid Debt Service in a situation where the Indirect Non Natural Force Majeure Event had not occurred.

Provided that the Procurers will have the above obligation to make payment for the Debt Service only (a) after supply of power from the

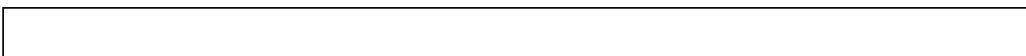


Power Station affected by such Indirect Non Natural Force Majeure Event has started, and (b) only if in the absence of such Indirect Non Natural Force Majeure Event, the Availability of Power Station would have resulted in Capacity Charges equal to Debt Service.

(e) If the average Availability of the Power Station is reduced below Normative Availability for over two (2) consecutive months or for any non consecutive period of four (4) months both within any continuous period of 60 Months [Procurer to insert number of months, based on the duration for procurement], as a result of a Direct Non Natural Force Majeure Event attributable to the Procurers, then, with effect from the end of such two (2) consecutive months or four (4) non consecutive months and for so long as the daily average Availability of the Power Station of the ..... [Insert "Seller" if Seller is NOT a Trading Licensee, or "Developer" if Seller is a Trading Licensee] continues to be reduced below Normative Availability as a result of a Direct Non Natural Force Majeure Event attributable to the Procurers, the Seller may elect through a written notice to the Procurers, to deem the Availability to be equal to Normative Availability from the end of such two (2) consecutive months or four (4) non consecutive months, regardless of its actual Available Capacity. In such a case, the Procurers shall be liable to make payment of Capacity Charges calculated on such deemed Normative Availability, after the cessation of the effects of Direct Non Natural Direct Force Majeure Event attributable to the Procurers in the form of an increase in Capacity Charge.

Provided such Capacity Charge increase shall be determined by Appropriate Commission on the basis of putting the ..... [Insert "Seller" if Seller is NOT a Trading Licensee, or "Developer" if Seller is a Trading Licensee] in the same economic position as the ..... [Insert "Seller" if Seller is NOT a Trading Licensee, or "Developer" if Seller is a Trading Licensee] would have been in case the Seller had been paid Capacity Charges in a situation where the Direct Non Natural Force Majeure Event attributable to the Procurers had not occurred.

(f) If the average Availability of the Power Station is reduced below Normative Availability for over two (2) consecutive months or for any non consecutive period of four (4) months both within any continuous period of 60 Months (.....) Months [Procurer to insert number of months, based on the duration for procurement], as a result of a Direct Non Natural Force Majeure Event not attributable to the Procurer(s), then, with effect from the end of such two (2) consecutive months or four (4) non consecutive months and for so long as the daily average Availability of the Power Station of the ..... [Insert "Seller" if Seller is NOT a Trading Licensee, or insert "Developer" if Seller is a Trading Licensee] continues to be reduced below Normative Availability as a result of a Direct Non Natural Force



Majeure Event not attributable to the Procurers, the Seller may elect through a written notice to the Procurer(s), to deem the Availability to be equal to Normative Availability from the end of such two (2) consecutive months or four (4) non consecutive months, regardless of its actual Available Capacity. In such a case, the Procurers shall be liable to make payment for Debt Service, subject to a maximum of Capacity Charges calculated on such deemed Normative Availability, after the cessation of the effects of Direct Non Natural Direct Force Majeure Event not attributable to the Procurers in the form of an increase in Capacity Charge.

Provided such Capacity Charge increase shall be determined by Appropriate Commission on the basis of putting the ..... [Insert "Seller" if Seller is NOT a Trading Licensee, or "Developer" if Seller is a Trading Licensee] in the same economic position as the ..... [Insert "Seller" if Seller is NOT a Trading Licensee, or "Developer" if Seller is a Trading Licensee] would have been in case the Seller had been paid Capacity Charges in a situation where the Direct Non Natural Force Majeure Event not attributable to the Procurers had not occurred.

(g) For the avoidance of doubt, it is specified that the charges payable under this Article 9 shall be paid by the Procurers in proportion to their then existing Contracted Capacities.

## 23.8 Additional Compensation and Procurer's Subrogation

23.8.1 If the Seller is entitled, whether actually or contingently, to be compensated by any person (other than the Procurer(s)) as a result of the occurrence of a Non Natural Force Majeure Event (or Natural Force Majeure Event affecting the Procurer(s)) for which it has received compensation from the Procurer(s) pursuant to this Article 9, including without limitation, payments made which payments would not have been made in the absence of Article 4.9.1, the Procurer(s) shall be fully subrogated to the Seller's rights against that person to the extent of the compensation paid by the Procurer(s) to the Seller.

Provided that in case the Seller has actually received compensation from any person other than the Procurers as well as the Procurer(s) as a result of the occurrence of a Non Natural Force Majeure Event (or Natural Force Majeure Event affecting the Procurer(s)), then the Seller shall forthwith refund the compensation received by it from the Procurer(s) but only to the extent of the compensation received by the Seller from any person other than the Procurer(s).

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**24**    *ARTICLE 10: CHANGE IN LAW*

**24.1** Definitions

In this Article 10, the following terms shall have the following meanings:

24.1.1 "Change in Law" means the occurrence of any of the following events after the date, which is seven (7) days prior to the Bid Deadline resulting into any additional recurring/ non-recurring expenditure by the Seller or any income to the Seller:

- **the enactment, coming into effect, adoption, promulgation, amendment, modification or repeal (without re-enactment or consolidation) in India, of any Law, including rules and regulations framed pursuant to such Law;**
- **a change in the interpretation or application of any Law by any Indian Governmental Instrumentality having the legal power to interpret or apply such Law, or any Competent Court of Law;**
- **the imposition of a requirement for obtaining any Consents, Clearances and Permits which was not required earlier;**
- **a change in the terms and conditions prescribed for obtaining any Consents, Clearances and Permits or the inclusion of any new terms or conditions for obtaining such Consents, Clearances and Permits; except due to any default of the Seller;**
- **any change in tax or introduction of any tax made applicable for supply of power by the Seller as per the terms of this Agreement.**

but shall not include (i) any change in any withholding tax on income or dividends distributed to the shareholders of the Seller, or (ii) change in respect of UI Charges or frequency intervals by an Appropriate Commission or (iii) any change on account of regulatory measures by the Appropriate Commission including calculation of Availability.

**24.2** Application and Principles for computing impact of Change in Law

24.2.1 While determining the consequence of Change in Law under this Article 10, the Parties shall have due regard to the principle that the purpose of compensating the Party affected by such Change in Law, is to restore through monthly Tariff Payment, to the extent contemplated in this Article 10, the affected Party to the same economic position as if such Change in Law has not occurred.

**24.3** Relief for Change in Law

24.3.1 During Construction Period [*Insert if Seller is not a Trading Licensee*]

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As a result of any Change in Law, the impact of increase/decrease of Capital Cost of the Power Station in the Tariff shall be governed by the formula given below:

For every cumulative increase/ decrease of each Rupees .....  
[Insert amount] in the Capital Cost during the Construction Period, the  
increase/ decrease in Non Escalable Capacity Charges shall be an amount  
equal to .....[Insert amount] of the Non Escalable Capacity  
Charges. In case of Dispute, Article 14 shall apply.

It is clarified that the above mentioned compensation shall be payable to either Party, only with effect from the date on which the total increase/ decrease exceeds amount of Rs. .... [Insert Amount].

#### 24.3.2 During Operating Period

The compensation for any decrease in revenue or increase in expenses to the Seller shall be payable only if the decrease in revenue or increase in expenses of the Seller is in excess of an amount equivalent to 1% of the value of the Letter of Credit in aggregate for the relevant Contract Year.

24.3.3 For any claims made under Articles 10.3.1 and 10.3.2 above, the Seller shall provide to the Procurers and the Appropriate Commission documentary proof of such increase/ decrease in cost of the Power Station or revenue/ expense for establishing the impact of such Change in Law.

24.3.4 The decision of the Appropriate Commission, with regards to the determination of the compensation mentioned above in Articles 10.3.1 and 10.3.2, and the date from which such compensation shall become effective, shall be final and binding on both the Parties subject to right of appeal provided under applicable Law.

## 24.4 Notification of Change in Law

24.4.1 If the Seller is affected by a Change in Law in accordance with Article 10.1 and the Seller wishes to claim relief for such a Change in Law under this Article 10, it shall give notice to the Procurers of such Change in Law as soon as reasonably practicable after becoming aware of the same or should reasonably have known of the Change in Law.

24.4.2 Notwithstanding Article 10.4.1, the Seller shall be obliged to serve a notice to the Procurers under this Article 10.4.2, even if it is beneficially affected by a Change in Law. Without prejudice to the factor of materiality or other provisions contained in this Agreement, the obligation to inform the Procurers contained herein shall be material.

Provided that in case the Seller has not provided such notice, the Procurers shall have the right to issue such notice to the Seller.

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24.4.3 Any notice served pursuant to this Article 10.4.2 shall provide, amongst other things, precise details of:

- (a) **the Change in Law; and**
- (b) **the effects on the Seller.**

## **24.5** Tariff Adjustment Payment on account of Change in Law

24.5.1 Subject to Article 10.2, the adjustment in monthly Tariff Payment shall be effective from:

- (i) the date of adoption, promulgation, amendment, re-enactment or repeal of the Law or Change in Law; or
- (ii) the date of order/ judgment of the Competent Court or tribunal or Indian Governmental Instrumentality, if the Change in Law is on account of a change in interpretation of Law.

24.5.2 The payment for Change in Law shall be through Supplementary Bill as mentioned in Article 8.8. However, in case of any change in Tariff by reason of Change in Law, as determined in accordance with this Agreement, the Monthly Invoice to be raised by the Seller after such change in Tariff shall appropriately reflect the changed Tariff.



25 ARTICLE 11: EVENTS OF DEFAULT AND TERMINATION

25.1 Seller Event of Default

25.1.1 The occurrence and continuation of any of the following events, unless any such event occurs as a result of a Force Majeure Event or a breach by Procurers of its obligations under this Agreement or a Procurer Event of Default, shall constitute a Seller Event of Default:

- (xiii) the failure to commence supply of power to the Procurers up to the Contracted Capacity, relevant to the Revised Scheduled Delivery Date(s) or the Scheduled Delivery Date, as the case may be, by the end of twelve (12) Months from its Scheduled Delivery Date or the Revised Scheduled Delivery Date, as the case may be, or
- (xiv) after the Delivery Date, the interruption of power supply by the Seller for a continuous period of two (2) Months and such default is not rectified within thirty (30) Days from the receipt of first notice from the Procurer(s) in this regard, or
- (xv) After the Delivery Date, the ..... [Insert "Seller" if Seller is NOT a Trading Licensee, or insert "Developer" if Seller is a Trading Licensee] fails to achieve Normative Availability for a period of twelve (12) consecutive or non-consecutive Months within any continuous period of thirty six (36) Months; OR

or

- (xvi) the Seller fails to make any payment (a) of an amount exceeding Rupees One (1) Crore in aggregate required to be made to Procurer(s) under this Agreement, within three (3) Months after the Due Date of undisputed invoice(s) /demand raised by the said Procurer(s) on the Seller or (b) of an amount up to Rupees One (1) Crore required to be made to Procurer(s) under this Agreement within six (6) Months after the Due Date of undisputed invoice(s)/ demand; or
- (xvii) any of the representations and warranties made by the Seller in Schedule 7 of this Agreement; being found to be untrue or inaccurate. Further, in addition to the above, any of representations made or the undertakings submitted by the Successful Bidder at the time of submission of the Bid being found to be breached or inaccurate, including but not limited to undertakings from its Parent Company/ Affiliates related to the minimum equity obligation and submission of the Contract Performance Guarantee;

Provided however, prior to considering any event specified under this sub-article to be an Event of Default, the Procurers shall give a notice to the Seller in writing of at least thirty (30) days, or

(xviii) if

- a) the Seller assigns, mortgages or charges or purports to assign, mortgage or charge any of its assets or rights related to the Power Station in contravention of the provisions of this Agreement; or**

**b) the Seller transfers or novates any of its rights and/ or obligations under this agreement, in a manner contrary to the provisions of this Agreement; except where such transfer**

**(iii). is in pursuance of a Law; and does not affect the ability of the transferee to perform, and such transferee has the financial capability to perform, its obligations under this Agreement or**

**(iv). is to a transferee who assumes such obligations under this Agreement and the Agreement remains effective with respect to the transferee;**

(xix) if (a) the Seller becomes voluntarily or involuntarily the subject of any bankruptcy or insolvency or winding up proceedings and such proceedings remain uncontested for a period of thirty (30) days, or (b) any winding up or bankruptcy or insolvency order is passed against the Seller, or (c) the Seller goes into liquidation or dissolution or has a receiver or any similar officer appointed over all or substantially all of its assets or official liquidator is appointed to manage its affairs, pursuant to Law,

***Provided that a dissolution or liquidation of the Seller will not be a Seller Event of Default if***

such dissolution or liquidation is for the purpose of a merger, consolidation or reorganization and where the resulting company continues to **meet** the Qualification Requirements in terms of the RFQ till six (6) months after commencement of supply of power by the Seller, and retains creditworthiness similar to the Seller and expressly assumes all obligations of the Seller under this Agreement and is in a position to perform them; or

(xx) the Seller repudiates this Agreement and does not rectify such breach within a period of thirty (30) days from a notice from the Lead Procurer in this regard; or

(xxi) except where due to any Procurer's failure to comply with its material obligations, the Seller is in breach of any of its material obligations pursuant to this Agreement or of any of the RFP Documents where the Procurers and Seller are parties, and such material breach is not rectified by the Seller within thirty (30) days of receipt of first notice in this regard given by the Lead Procurer on behalf of the Procurers.

(xxii) any direct or indirect change in the shareholding of the Seller in contravention of the terms of this Agreement; or

(xxiii) failure to renew or replace the Contract Performance Guarantee, as per the terms of this Agreement; or

(xxiv) occurrence of any other event which is specified in this Agreement to be a material breach/ default of the Seller.



## 25.2 Procurer Event of Default

25.2.1 The occurrence and the continuation of any of the following events, unless any such event occurs as a result of a Force Majeure Event or a breach by the Seller of its obligations under this Agreement or a Seller Event of Default, shall constitute the Event of Default on the part of defaulting Procurer:

- (viii) a defaulting Procurer fails to meet any of its obligations, as specified in Article 4.3; or
- (ix) a defaulting Procurer fails to pay (with respect to a Monthly Bill or a Supplementary Bill) an amount exceeding fifteen (15%) of the undisputed part of the most recent Monthly/ Supplementary Bill for a period of ninety (90) days after the Due Date and the Seller is unable to recover the amount outstanding to the Seller through the Collateral Arrangement and Letter of Credit; or
- (x) the defaulting Procurer repudiates this Agreement and does not rectify such breach even within a period of thirty (30) days from a notice from the Seller in this regard; or
- (xi) except where due to any Seller's failure to comply with its obligations, the defaulting Procurer(s) is/are in material breach of any of its obligations pursuant to this Agreement or of any of the other RFP Documents where the Procurer(s) and the Seller are Parties, and such material breach is not rectified by the defaulting Procurer within thirty (30) days of receipt of notice in this regard from the Seller to the Procurer(s); or
- (xii) any representation and warranties made by the Procurer(s) in Schedule 7 of this Agreement. being found to be untrue or inaccurate. Provided however, prior to considering any event specified under this sub-article to be an Event of Default, the Seller shall give a notice to the Procurer in writing of at least thirty (30) days; or
- (xiii) if
  - a Procurer becomes voluntarily or involuntarily the subject of any bankruptcy or insolvency or winding up proceedings and such proceedings remain uncontested for a period of thirty (30) days, or
  - any winding up or bankruptcy or insolvency order is passed against the Procurer(s), or
  - a Procurer goes into liquidation or dissolution or a receiver or any similar officer is appointed over all or substantially all of its assets or official liquidator is appointed to manage its affairs, pursuant to Law,

Provided that it shall not constitute a Procurer Event of Default, where such dissolution or liquidation of Procurer or such Procurer is for the purpose of a merger, consolidation or reorganization and where the resulting entity has

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the financial standing to perform its obligations under this Agreement and has creditworthiness similar to Procurer or such Procurer and expressly assumes all obligations of Procurer or such Procurer under this Agreement and is in a position to perform them; or;

- (xiv) occurrence of any other event which is specified in this Agreement to be a material breach or default of the Procurer(s).

## 25.3 Procedure for cases of Seller Event of Default

**25.3.1 *Upon the occurrence and continuation of any Seller Event of Default under Article 11.1, Majority Procurers, through the Lead Procurer shall have the right to deliver to the Seller a notice with a copy to the Appropriate Commission and the Lenders' Representative (if substitution rights agreed to be provided) [To be inserted if substitution rights are demanded to be provided by the Seller], of their intention to terminate this Agreement (Procurer Preliminary Default Notice), which shall specify in reasonable detail, the circumstances giving rise to the issue of such notice.***

25.3.2 Following the issue of Procurer Preliminary Default Notice, the Consultation Period of ninety (90) days or such longer period as the Parties may agree, shall apply and it shall be the responsibility of the Parties to discuss as to what steps shall have to be taken with a view to mitigate the consequences of the relevant Event of Default having regard to all the circumstances.

25.3.3 During the Consultation Period, the Parties shall, save as otherwise provided in this Agreement, continue to perform their respective obligations under this Agreement.

25.3.4 Within a period of seven (7) days following the expiry of the Consultation Period unless the Parties shall have otherwise agreed to the contrary or the Seller Event of Default giving rise to the Consultation Period shall have ceased to exist or shall have been remedied, the Procurers may terminate this Agreement by giving a written Termination Notice of thirty (30) days to the Seller with a copy to the Appropriate Commission. *[Insert further in case the Seller chooses the option of Lender's substitution rights]* A copy of the Termination Notice shall be given to the Lenders' Representative. The Lenders may exercise or the Procurers may require the Lenders to exercise their substitution rights and other rights provided to them, if any, under Financing Agreements and the Procurers would have no objection to the Lenders exercising their rights if it is in consonance with provisions of Schedule 12. Alternatively, in case the Lenders do not

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exercise their rights as mentioned herein above, the Capacity Charge of the Seller shall be reduced by twenty percent (20%) for the period of Seller Event of Default.

25.3.5 Further, in addition to the reduction in Capacity Charges as per the provision in Article 11.3.4, the Seller shall be liable to pay to the Procurers, charges equivalent to twelve (12) months Capacity Charges calculated at Normative Availability. Such payment shall be made by the Seller to the Procurers within thirty (30) days of the termination of the Agreement. In case of inability of the Seller to make such payment within the stipulated time period of thirty (30) days, the Procurer(s) shall have the right to encash the Contract Performance Guarantee, if any available, as on that date and appropriate the proceeds of such encashment towards the payment due from the Seller. Any amount remaining unpaid on the part of the Seller shall be considered as a material breach and the Procurers shall have the right to enforce such claim as per the provisions of the Law.

## **25.4 Termination for Procurer Event of Default**

25.4.1 Upon the occurrence and continuation of any Procurer Event of Default pursuant to Article 11.2.1(ii) , the Seller shall follow the remedies provided under Article 8.5.2 or Article 8.5.2 or Article 8.5.4, as the case may be.

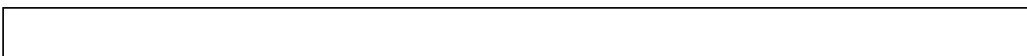
25.4.2 Without in any manner affecting the rights of the Seller under Article 11.4.1, on the occurrence of any Procurer Event of Default specified in Article 11.2 the Seller shall have the right to deliver to the Procurers, a Seller Preliminary Default Notice, which notice shall specify in reasonable detail the circumstances giving rise to its issue.

25.4.3 Following the issue of a Seller Preliminary Default Notice, the Consultation Period of ninety (90) days or such longer period as the Parties may agree, shall apply and it shall be the responsibility of the Parties to discuss as to what steps shall be taken with a view to mitigate the consequences of the relevant Event of Default having regard to all the circumstances.

25.4.4 During the Consultation Period, the Parties shall continue to perform their respective obligations under this Agreement.

25.4.5 After a period of seven (7) days following the expiry of the Consultation Period and unless the Parties shall have otherwise agreed to the contrary or the Procurer Event of Default giving rise to the Consultation Period shall have ceased to exist or shall have been remedied, the Seller shall be free to sell the Contracted Capacity and corresponding available capacity of the Procurer(s) committing Procurer Event of Default to any third party of the Seller's choice.

Provided such Procurer shall have the liability to make payments for Capacity Charges based on Normative Availability to the Seller for the period upto the Expiry Date, subject to maximum of three (3) years or half of the Term whichever is lower from the eighth day after the expiry of the Consultation Period.



Provided further that in such period, in case the Seller is able to sell electricity to any third party at a price which is in excess of the Energy Charges, then such excess realization will reduce the Capacity Charge payments due from such Procurer(s).

For the avoidance of doubt, the above excess adjustment would be applied on a cumulative basis for such period. During such period, the Seller shall use its best effort to sell the Contracted Capacity and corresponding available capacity of Procurer or such Procurer generated or capable of being generated to such third parties at the most reasonable terms available in the market at such time, having due regard to the circumstances at such time and the pricing of electricity in the market at such time.

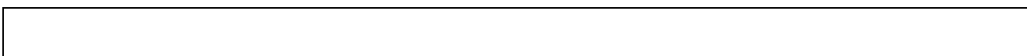
Provided further, the Seller shall ensure that sale of power to the shareholders of the Seller or any direct or indirect Affiliate of the Seller/ shareholders of the Seller, is not at a price less than the Tariff, without obtaining the prior written consent of such Procurer(s). Such request for consent would be responded to within a maximum period of three (3) days failing which it would be deemed that the Procurer has given his consent.

Provided further that at the end of such period, this Agreement shall automatically terminate but only with respect to such Procurer and thereafter, such Procurer shall have no further Capacity Charge liability towards the Seller.

Provided further, the Seller shall have the right to terminate this Agreement with respect to such Procurer(s) even before the expiry of such period provided on such termination, the future Capacity Charge liability of such Procurer(s) shall cease immediately.

## **25.5 Termination due to Force Majeure**

25.5.1 If the Force Majeure Event or its effects continue to be present beyond the period as specified in Article 4.7.3, either Party shall have the right to cause termination of the Agreement. In such an event, subject to the terms and conditions of the Financing Agreements, this Agreement shall terminate on the date of such Termination Notice. In case of such termination, the Contract Performance Guarantee shall be returned to the Seller as per the provisions of Article 3.8.



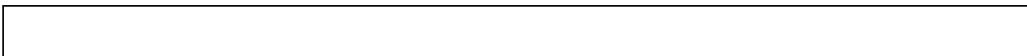
## 26.1 Indemnity

26.1.1 The Seller shall indemnify, defend and hold Procurers harmless against:

- c) any and all third party claims, actions, suits or proceedings against the Procurers for any loss of or damage to property of such third party, or death or injury to such third party, arising out of a breach by the Seller of any of its obligations under this Agreement, except to the extent that any such claim, action, suit or proceeding has arisen due to a negligent act or omission, breach of this Agreement or breach of statutory duty on the part of Procurers, its contractors, servants or agents; and
- d) any and all losses, damages, costs and expenses including legal costs, fines, penalties and interest actually suffered or incurred by Procurers from third party claims arising by reason of:
  - (i) breach by the Seller of any of its obligations under this Agreement, (provided that this Article 12 shall not apply to such breaches by the Seller, for which specific remedies have been provided for under this Agreement) except to the extent that any such losses, damages, costs and expenses including legal costs, fines, penalties and interest (together to constitute "Indemnifiable Losses") has arisen due to a negligent act or omission, breach of this Agreement or breach of statutory duty on the part of Procurers, its contractors, servants or agents, or
  - (ii) any of the representations or warranties of the Seller under this Agreement being found to be inaccurate or untrue.

26.1.2 Procurers shall indemnify, defend and hold the Seller harmless against:

- c) any and all third party claims, actions, suits or proceedings against the Seller, for any loss of or damage to property of such third party, or death or injury to such third party, arising out of a breach by Procurers of any of its obligations under this Agreement except to the extent that any such claim, action, suit or proceeding has arisen due to a negligent act or omission, breach of this Agreement or breach of statutory duty on the part of the Seller, its contractors, servants or agents; and
- d) any and all losses, damages, costs and expenses including legal costs, fines, penalties and interest ('Indemnifiable Losses') actually suffered or incurred by the Seller from third party claims arising by reason of
  - (iii) a breach by Procurers of any of its obligations under this Agreement (Provided that this Article 12 shall not apply to such breaches by Procurers, for which specific remedies have been provided for under this Agreement.), except to the extent that any such Indemnifiable Losses have arisen due to a negligent act or omission, breach of this Agreement or breach of statutory duty on the part of the Seller, its contractors, servants or agents, or
  - (iv) any of the representations or warranties of the Procurers under this Agreement being found to be inaccurate or untrue.





## 26.2 Monetary Limitation of Liability

26.2.1 A Party ("Indemnifying Party") shall be liable to indemnify the other Party ("Indemnified Party") under this Article 12 for any indemnity claims made in a Contract Year only up to an amount of Rupees ..... (.....) [*Insert amount on the basis of Rs. 50,000/= per MW*]. With respect to the Procurers, the above limit of Rupees ..... (.....) shall be divided in the ratio of their Contracted Capacity existing on the date of the indemnity claim."

## 26.3 Procedure for claiming Indemnity

### 26.3.1 Third party claims

c. Where the Indemnified Party is entitled to indemnification from the Indemnifying Party pursuant to Article 12.1.1(a) or 12.1.2(a), the Indemnified Party shall promptly notify the Indemnifying Party of such claim, proceeding, action or suit referred to in Article 12.1.1(a) or 12.1.2 (a) in respect of which it is entitled to be indemnified. Such notice shall be given as soon as reasonably practicable after the Indemnified Party becomes aware of such claim, proceeding, action or suit. The Indemnifying Party shall be liable to settle the indemnification claim within thirty (30) days of receipt of the above notice. Provided however that, if:

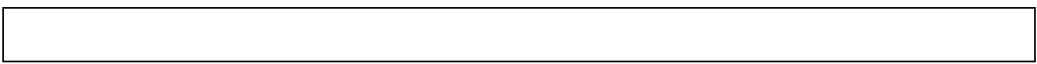
iii) the Parties choose to contest, defend or litigate such claim, action, suit or proceedings in accordance with Article 12.3.1 (b) below; and

iv) the claim amount is not required to be paid/ deposited to such third party pending the resolution of the Dispute,

the Indemnifying Party shall become liable to pay the claim amount to the Indemnified Party or to the third party, as the case may be, promptly following the resolution of the Dispute, if such Dispute is not settled in favour of the Indemnified Party.

d. The Indemnified Party may contest, defend and litigate a claim, action, suit or proceeding for which it is entitled to be Indemnified under Article 12.1.1(a) or 12.1.2(a) and the Indemnifying Party shall reimburse to the Indemnified Party all reasonable costs and expenses incurred by the Indemnified party. However, such Indemnified Party shall not settle or compromise such claim, action, suit or proceedings without first getting the consent of the Indemnifying Party, which consent shall not be unreasonably withheld or delayed.

An Indemnifying Party may, at its own expense, assume control of the defence of any proceedings brought against the Indemnified Party if it acknowledges its obligation to indemnify such Indemnified Party, gives such Indemnified Party prompt notice of its intention to assume control of the defence, and employs an independent legal counsel at its own cost that is reasonably satisfactory to the Indemnified Party.



## 26.4 Indemnifiable Losses

26.4.1 Where an Indemnified Party is entitled to Indemnifiable Losses from the Indemnifying Party pursuant to Article 12.1.1(b) or 12.1.2(b), the Indemnified Party shall promptly notify the Indemnifying Party of the Indemnifiable Losses actually incurred by the Indemnified Party. The Indemnifiable Losses shall be reimbursed by the Indemnifying Party within thirty (30) days of receipt of the notice seeking Indemnifiable Losses by the Indemnified Party. In case of non payment of such losses after a valid notice under this Article 12.4, such event shall constitute a payment default under Article 11.

## 26.5 Infringement of Intellectual Property Rights

26.5.1

- e) The Seller shall, subject to the Procurers compliance with Article 12.5.1 b), indemnify and hold harmless the Procurers and its employees and officers from and against any and all suits, actions or administrative proceedings, claims, demands, losses, damages, costs, and expenses of whatsoever nature, including attorney's fees and expenses, which the Procurers may suffer as a result of any infringement or alleged infringement of any patent, utility model, registered design, trademark, copyright or other intellectual property right registered or otherwise existing at the date of the Agreement by reason of the setting up of the Power Station by the *[Insert "Seller" if Seller is NOT a Trading Licensee, or insert "Developer" if Seller is a Trading Licensee]*.

Such indemnity shall not cover any use of the Power Station or any part thereof other than for the purpose indicated by or to be reasonably inferred from the Agreement, any infringement resulting from the misuse of the Power Station or any part thereof, or any products produced in association or combination with any other equipment, plant or materials not supplied by the .....*[Insert "Seller" if Seller is NOT a Trading Licensee, or "Developer" if Seller is a Trading Licensee]*, pursuant to the Agreement.

- f) If any proceedings are brought or any claim is made against the Procurers arising out of the matters referred to in Article 12.5.1 (a), the Lead Procurer shall promptly give the Seller a notice thereof, and the Seller shall at its own expense take necessary steps and attend such proceedings or claim and any negotiations for the settlement of any such proceedings or claim. The Seller shall promptly notify the Lead Procurer of all actions taken in such proceedings or claims.
- g) If the Seller fails to notify the Lead Procurer within twenty-eight (28) days after receipt of such notice from the Lead Procurer under Article 12.5.1 b) above, that it intends to attend any such proceedings or claim, then the Lead Procurer shall be free to attend the same on their own behalf at the cost of the Seller. Unless the Seller has so failed to notify the Lead Procurer within the twenty eight (28) days period, the Lead Procurer shall make no admission that may be prejudicial to the defence of any such proceedings or claims.

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- h) The Lead Procurer shall, at the Seller's request, afford all available assistance to the Seller in attending to such proceedings or claim, and shall be reimbursed by the Seller for all reasonable expenses incurred in so doing.

#### 26.5.2

- e) The Procurers, subject to the Seller's compliance with Article 12.5.2 (b) shall indemnify and hold harmless the Seller and its employees, officers from and against any and all suits, actions or administrative proceedings, claims, demands, losses, damages, costs and expenses of whatsoever nature, including attorney's fees and expenses, which the Seller may suffer as a result of any infringement by the Procurers or alleged infringement of any patent, utility model, registered design, trademark, copyright or other intellectual property right registered..
- f) If any proceedings are brought or any claim is made against the Seller arising out of the matters referred to in Article 12.5.2 (a) the Seller shall promptly give the Lead Procurer a notice thereof, and the Lead Procurer shall at its own expense take necessary steps and attend such proceedings or claim and any negotiations for the settlement of any such proceedings or claim. The Lead Procurer shall promptly notify the Seller of all actions taken in such proceedings or claims.
- g) If the Lead Procurer fails to notify the Seller within twenty-eight (28) days after receipt of such notice from the Seller under Article 12.5.2 (b) above, that it intends to attend any such proceedings or claim, then the Seller shall be free to attend the same on its own behalf at the cost of the Procurer(s). Unless the Lead Procurer has so failed to notify the Seller within the twenty (28) days period, the Seller shall make no admission that may be prejudicial to the defence of any such proceedings or claim.
- h) The Seller shall, at the Procurers request, afford all available assistance to the Procurers in attending to such proceedings or claim, and shall be reimbursed by the Procurers for all reasonable expenses incurred in so doing.

## 26.6 Limitation on Liability

- 26.6.1 Except as expressly provided in this Agreement, neither the Seller nor Procurers nor their respective officers, directors, agents, employees or Affiliates (or their officers, directors, agents or employees), shall be liable or responsible to the other Party or its Affiliates, officers, directors, agents, employees, successors or permitted assigns or their respective insurers for incidental, indirect or consequential damages, connected with or resulting from performance or non-performance of this Agreement, or anything done in connection herewith, including claims in the nature of lost revenues, income or profits (other than payments expressly required and properly due under this Agreement), any increased expense of, reduction in or loss of power generation or equipment used therefore, irrespective of whether such claims are based upon breach of warranty, tort (including negligence, whether of the Procurers, the Seller or others), strict liability, contract, breach of statutory duty, operation of law or otherwise.
- 26.6.2 Procurers shall have no recourse against any officer, director or shareholder of the Seller or any Affiliate of the Seller or any of its officers, directors or shareholders for such claims excluded under this Article. The Seller shall have no recourse against any officer,

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director or shareholder of Procurers, or any Affiliate of Procurers or any of its officers, directors or shareholders for such claims excluded under this Article.

## **26.7 Duty to Mitigate**

26.7.1 The Parties shall endeavour to take all reasonable steps so as mitigate any loss or damage which has occurred under this Article 12.

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**27** ARTICLE 13: ASSIGNMENTS AND CHARGES

**27.1** Assignments

27.1.1 This Agreement shall be binding upon, and inure to the benefit of the Parties and their respective successors and permitted assigns. This Agreement shall not be assigned by any Party other than by mutual consent between the Parties to be evidenced in writing:

Provided that, such consent shall not be withheld if the Procurers seeks to transfer to any transferee all of its rights and obligations under this Agreement; and

(a) such transferee is either the owner or operator of all or substantially all of the distribution system of such Procurers and /or such transferee is a successor entity of the Procurers; and

(b) this Agreement and the other RFP Documents shall continue to remain valid and binding on such successor.

27.1.2 *[Insert in case the Seller chooses the option of Lender's substitution rights]* Seller shall be entitled to assign its rights and obligations under this Agreement in favor of the Selectee duly appointed pursuant to the terms of Schedule 12 of this Agreement.

**27.2** Permitted Charges

27.2.1 Neither Party shall create or permit to subsist any encumbrance over all or any of its rights and benefits under this Agreement.

27.2.2 However, the Seller may create any encumbrance over all or part of the Receivables, Payment Mechanism or the RFP Documents in favour of the Lenders or the Lender's Representative on their behalf, as security for:

(a) amounts payable under the Financing Agreements; and

(b) any other amounts agreed by the Parties.

**Provided that:**

I the Lenders or the Lender's Representative on their behalf shall have entered into the Financing Agreements and agreed upon in writing to the provisions of Schedule 12 of this Agreement; and

II any encumbrances granted by the Seller in accordance with this Article 13.2.2 shall contain provisions pursuant to which the Lenders or the Lender's Representative on their behalf agrees unconditionally with the Seller acting for itself and as trustee of the Procurers to release from such encumbrances all of the right, title and interest to additional compensation so as to enable the Procurers to claim its right of subrogation. For the purposes of this Article, additional compensation shall mean the compensation that



the Seller is entitled, whether actually or contingently, to receive from the Procurers as well as compensated by any person other than the Procurers for the same event.

27.2.3 Article 13.1.2 does not apply to :

- d) liens arising by operation of law (or by an agreement evidencing the same) in the ordinary course of supply of power by the Seller;
- e) pledges of goods, the related documents of title and / or other related documents, arising or created in the ordinary course of supply of power by the Seller; or
- f) security arising out of retention of title provisions in relation to goods acquired in the ordinary course of supply of power by the Seller..

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28 ARTICLE 14: GOVERNING LAW AND DISPUTE RESOLUTION

28.1 Governing Law

28.1.1 This Agreement shall be governed by and construed in accordance with the Laws of India. Any legal proceedings in respect of any matters, claims or disputes under this Agreement shall be under the jurisdiction of appropriate courts in the State of Rajasthan

28.2 Amicable Settlement and Dispute Resolution

28.2.1 Amicable Settlement

28.2.1.1 Either Party is entitled to raise any claim, dispute or difference of whatever nature arising under, out of or in connection with this Agreement ( "Dispute") by giving a written notice (Dispute Notice) to the other Party, which shall contain:

- (i) a description of the Dispute;
- (ii) the grounds for such Dispute; and
- (iii) all written material in support of its claim.

28.2.1.2 The other Party shall, within thirty (30) days of issue of Dispute Notice issued under Article 14.2.1.1, furnish:

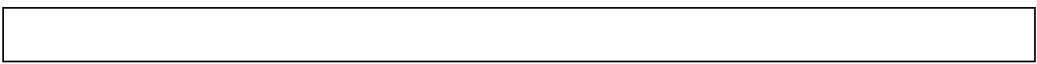
- (i) counter-claim and defences, if any, regarding the Dispute; and
- (ii) all written material in support of its defences and counter-claim.

28.2.1.3 Within thirty (30) days of issue of Dispute Notice by any Party pursuant to Article 14.2.1.1 if the other Party does not furnish any counter claim or defence under Article 14.2.1.2 or thirty (30) days from the date of furnishing counter claims or defence by the other Party, both the Parties to the Dispute shall meet to settle such Dispute amicably. If the Parties fail to resolve the Dispute amicably within thirty (30) days from the later of the dates mentioned in this Article 14.2.1.3, the Dispute shall be referred for dispute resolution in accordance with Article 14.3.

28.3 Dispute Resolution

28.3.1 Dispute Resolution by the Appropriate Commission

28.3.1.1 Where any Dispute (i) arises from a claim made by any Party for any change in or determination of the Tariff or any matter related to Tariff or claims made by any Party which partly or wholly relate to any change in the Tariff or determination of any of such claims could result in change in the Tariff, or (ii) relates to any matter agreed to be referred to the Appropriate Commission under Articles 4.9.1, 10.3 and 15.3 ..... *[Insert "or Clause 12.9.4 of Schedule 12 hereof" in case Successful Bidder requests for substitution rights of the Lenders to be provided]*, such Dispute shall be submitted to adjudication by the Appropriate Commission. Appeal



against the decisions of the Appropriate Commission shall be made only as per the provisions of the Electricity Act, 2003, as amended from time to time.

28.3.1.2 The obligations of the Procurers under this Agreement towards the Seller shall not be affected in any manner by reason of inter-se disputes amongst the Procurers.

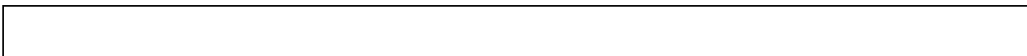
#### 28.3.2 **Dispute Resolution through Arbitration**

28.3.2.1 If the Dispute arises out of or in connection with any claims not covered in Article 14.3.1.1, such Dispute shall be resolved by arbitration under the Indian Arbitration and Conciliation Act, 1996 and the Rules of the Indian Council of Arbitration, in accordance with the process specified in this Article. In the event of such Dispute remaining unresolved as referred to in Article 14.2.1.3 hereof, any party to such Dispute may refer the matter to Registrar under the Rules of the Indian Council of Arbitration.

- v) *The Arbitration Tribunal shall consist of three (3) arbitrators to be appointed in accordance with the Indian Council of Arbitration Rules*
- vi) *The place of arbitration shall be Jaipur. The language of the arbitration shall be English.*
- vii) *The Arbitration Tribunal's award shall be substantiated in writing. The Arbitration Tribunal shall also decide on the costs of the arbitration proceedings and the allocation thereof.*
- viii) *The provisions of this Article shall survive the termination of this PPA for any reason whatsoever.*

#### **28.4 Parties to Perform Obligations**

28.4.1 Notwithstanding the existence of any Dispute and difference referred to the Appropriate Commission or the Arbitration Tribunal as provided in Article 14.3 and save as the Appropriate Commission or the Arbitration Tribunal may otherwise direct by a final or interim order, the Parties hereto shall continue to perform their respective obligations (which are not in dispute) under this Agreement.





**29** ARTICLE 15: MISCELLANEOUS PROVISIONS

**29.1** *Lead Procurer*

29.1.1 The Procurers hereby appoint and authorise “.....” *[Insert name of the Procurer with the highest Contracted Capacity]* [hereinafter referred to as the “Lead Procurer”] to represent all the Procurers for discharging the rights and obligations of the Procurers under this Agreement, which are required to be undertaken by all the Procurers. All the Procurers shall follow and be bound by the decisions of the Lead Procurer. Accordingly each Procurer agrees that any decision, communication, notice, action or inaction of the Lead Procurer on matters specified under this Agreement to be dealt with by the Lead Procurer shall be deemed to have been on its/his behalf and shall be binding on each of the Procurer. The Seller shall be entitled to rely upon any such action, decision or communication or notice from the Lead Procurer. It is clarified that provisions under this Article 15.1 are not intended to and shall not render the Lead Procurer liable to discharge Tariff Payments due to Seller from the other Procurers.

29.1.2 On the occurrence of any Event of Default specified in Article 11.2 by the Lead Procurer, the Seller may, at its option, within a period of fifteen (15) days from the date of issue of the Seller’s Preliminary Default Notice referred to in Article 11.4.2 and if the said default by the Lead Procurer subsists, specify in writing to all the Procurers that the ..... *[Insert name of the Procurer, which has the next highest Contracted Capacity]* shall be the new Lead Procurer, as per the provisions of this Article 15.1. In such a case, if the Seller so notifies, the new Lead Procurer shall, thereafter, act as Lead Procurer for the purposes of this Agreement, and the Lead Procurer earlier appointed under Article 15.1.1 shall automatically cease to be the Lead Procurer. It is clarified that all decisions taken by the ..... *[Insert Name of the Lead Procurer]* appointed under Article 15.1.1, in its capacity as Lead Procurer before such change, shall continue to be valid, in accordance with this Agreement.

29.1.3 Notwithstanding anything contained above, any decision which is required to be taken by the Procurers jointly under the provisions of this Agreement, shall be taken by all the Procurers and in case of difference amongst the Procurers, the said decision shall be taken by the Majority Procurers, as defined in Article 15.1.4 below.

29.1.4 Any decision taken by Procurers, who taken together constitute sixty five percent (65%) of the Contracted Capacity and constitute in number at least fifty percent (50%) of the total number of Procurers (hereinafter referred to as “Majority Procurers”), shall be binding on the Lead Procurer and all other Procurers. Majority Procurers shall also have the right to replace the Lead Procurer by any other Procurer of their choice. All decisions taken by the Majority Procurers in this Agreement shall be conveyed by the Lead Procurer.

**29.2** *Minimum Equity holding/ Equity Lock-In*

29.2.1 The minimum shareholding requirements specified in this Article shall apply to all of the entity/ entities which have made equity investment in the Seller and where the Seller is different from the Successful Bidder.



29.2.2 The aggregate equity share holding of the .....*[Insert “Lead Member” in case the Successful Bidder is a Bidding Consortium OR “the Successful Bidder” in case the Successful Bidder is a Bidding Company]* in the issued and paid up equity share capital of the Seller shall not be less than the following:

- g) **Fifty-one percent (51%) from the Effective Date up to a period of two (2) years after commencement of supply of power; and**
- h) **Twenty-six (26%) for a period of three (3) years thereafter.**

29.2.3 *[Insert in case of Successful Bidder being a Bidding Company]* All investors of the Seller, except the Bidding Company, shall be allowed to divest their equity as long as the the Bidding Company hold the minimum equity specified in Article 15.2.2.

29.2.4 *[Insert in case of Successful Bidder being a Bidding Consortium]* All Members of the Seller, except the Lead Member, shall be allowed to divest their equity as long as the the Lead Member hold the minimum equity specified in Article 15.2.2.

29.2.5 In case equity in the Seller is held by the Affiliate(s), Parent Company or Ultimate Parent Company, such Affiliate(s), Parent Company or Ultimate Parent Company shall be permitted to transfer its shareholding in the Seller to another Affiliate or Parent Company or Ultimate Parent Company. If any such shareholding entity, qualifying as an Affiliate /Parent Company/ Ultimate Parent Company, is likely to cease to meet the criteria to qualify as an Affiliate /Parent Company/ Ultimate Parent Company, the shares held by such entity shall be transferred to another Affiliate/ Parent Company/ Ultimate Parent Company.

29.2.6 All transfers of shareholding of the Seller by any of the entities referred to above, shall be after prior written permission from the Procurer(s).

29.2.7 For computation of effective Equity holding, the Equity holding of the Successful Bidder or its Ultimate Parent Company in such Affiliate(s) or Parent Company and the equity holding of such Affiliate(s) or Ultimate Parent Company in the Seller shall be computed in accordance with the example given below:

If the Parent Company or the Ultimate Parent Company of the Successful Bidder A directly holds thirty percent (30%) of the equity in the Seller , then holding of Successful Bidder A in the Seller shall be thirty percent (30%);

If Successful Bidder A holds thirty percent (30%) equity of the Affiliate and the Affiliate holds fifty percent (50%) equity in the Seller, then, for the purposes of ascertaining the minimum equity/ equity lock-in requirements specified above, the effective holding of Bidder A in the Seller shall be fifteen percent (15%), (i.e., 30%\* 50%)

29.2.8 The provisions as contained in this Article 15.2 shall override the terms of the consortium agreement submitted as part of the Bid.

29.2.9 *[Insert this Article in case the PPA is being signed by the Seller being a Trading Licensee]* The provisions contained in Article 15.2.1 to Article 15.2.7 shall not be



applicable if the Seller is a Trading Licensee or in case of a Seller being a bidding company and not forming a separate Project Company . However the Seller in such case shall ensure that similar provisions as contained in Article 15.2.1 to Article 15.2.7 are incorporated in the exclusive power purchase agreement submitted by the Seller. In such case, the aforesaid provisions shall be applicable with respect to ..... (Insert name of the majority investor in the Developer as specified in the power purchase agreement submitted as a part of the Selected Bid). The Seller shall ensure the compliance of the provisions mentioned in this Article 15.2.9. and any default on the part of the Seller in compliance of the same shall be an Event of Default in terms of Article 11. The Procurers shall have the right to verify the compliance of the provision as mentioned in this Article 15.2.9.

**29.3 Amendment**

29.3.1 This Agreement may only be amended or supplemented by a written agreement between the Parties and after obtaining the approval of the Appropriate Commission, where necessary.

**29.4 Third Party Beneficiaries**

29.4.1 This Agreement is solely for the benefit of the Parties and their respective successors and permitted assigns and shall not be construed as creating any duty, standard of care or any liability to, any person not a party to this Agreement.

**29.5 Waiver**

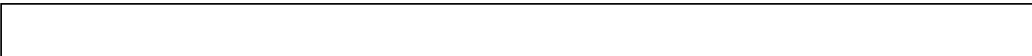
29.5.1 No waiver by either Party of any default or breach by the other Party in the performance of any of the provisions of this Agreement shall be effective unless in writing duly executed by an authorised representative of such Party:

29.5.2 Neither the failure by either Party to insist on any occasion upon the performance of the terms, conditions and provisions of this Agreement nor time or other indulgence granted by one Party to the other Parties shall act as a waiver of such breach or acceptance of any variation or the relinquishment of any such right or any other right under this Agreement, which shall remain in full force and effect.

**29.6 Entirety**

29.6.1 This Agreement and the Schedules are intended by the Parties as the final expression of their agreement and are intended also as a complete and exclusive statement of the terms of their agreement.

29.6.2 Except as provided in this Agreement, all prior written or oral understandings, offers or other communications of every kind pertaining to this Agreement or supply of power up to the Contracted Capacity under this Agreement to the Procurers by the Seller shall stand superseded and abrogated.



## 29.7 Confidentiality

29.7.1 The Parties undertake to hold in confidence this Agreement and RFP Documents and not to disclose the terms and conditions of the transaction contemplated hereby to third parties, except:

- d) to their professional advisors;
- e) to their officers, contractors, employees, agents or representatives, financiers, who need to have access to such information for the proper performance of their activities; or
- f) disclosures required under Law.

without the prior written consent of the other Parties.

29.7.2 Notwithstanding the provisions under Article 15.7.1, the Seller agrees and acknowledges that the Procurers may at any time, disclose the terms and conditions of the Agreement and the other RFP Documents to any person, to the extent stipulated under the Law or the Competitive Bidding Guidelines.

## 29.8 Affirmation

29.8.1 The Seller and Procurers, both affirm that:

- c) neither it nor its respective directors, employees, or agents has paid or undertaken to pay or shall in the future pay any unlawful commission, bribe, pay-off or kick-back; and
- d) it has not in any other manner paid any sums, whether in Indian currency or foreign currency and whether in India or abroad to the other Party to procure this Agreement, and the Seller and Procurers hereby undertake not to engage in any similar acts during the Term of Agreement.

## 29.9 Severability

29.9.1 The invalidity or enforceability, for any reason, of any part of this Agreement shall not prejudice or affect the validity or enforceability of the remainder of this Agreement, unless the part held invalid or unenforceable is fundamental to this Agreement.

## 29.10 Relationship of the Parties

This Agreement shall not be interpreted or construed to create an association, joint venture, or partnership or agency or any such other relationship between the Parties or to impose any partnership obligation or liability upon either Party and neither Party shall have any right, power or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as or be an agent or representative of, or to otherwise bind, the other Party.

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## 29.11 Counterparts

29.11.1 This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which collectively shall be deemed one and the same Agreement.

## 29.12 Notices

29.12.1 All notices or other communications which are required to be given under this Agreement shall be in writing and in the English language.

29.12.2 If to the Seller, all notices or other communications which are required must be delivered personally, by registered post or facsimile or any other method duly acknowledged to the addresses below:

**Address** :  
**Attention** :  
**Email** :  
**Fax. No.** :  
**Telephone No.** :

29.12.3 If to the Procurers, all notices or communications must be delivered personally or by registered post or facsimile or any other mode duly acknowledged to the address(es) below:

### (i) Jaipur Vidyut Vitran Nigam Ltd

**Address** :  
**Attention** :  
**Email** :  
**Fax. No.** :  
**Telephone No.** :

### (ii) Jodhpur Vidyut Vitran Nigam Ltd

**Address** :  
**Attention** :  
**Email** :  
**Fax. No.** :  
**Telephone No.** :

### (iii) Ajmer Vidyut Vitran Nigam Ltd

**Address** :  
**Attention** :  
**Email** :

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**Fax No.** :  
**Telephone No.** :

29.12.4 All notices or communications given by facsimile shall be confirmed by sending a copy of the same via post office in an envelope properly addressed to the appropriate Party for delivery by registered mail. All notices shall be deemed validly delivered upon receipt evidenced by an acknowledgement of the recipient, unless the Party delivering the notice can prove in case of delivery through the registered post that the recipient refused to acknowledge the receipt of the notice despite efforts of the postal authorities.

29.12.5 Any Party may by notice of at least fifteen (15) days to the other Party change the address and/or addresses to which such notices and communications to it are to be delivered or mailed.

## **29.13 Language**

29.13.1 All agreements, correspondence and communications between the Parties relating to this Agreement and all other documentation to be prepared and supplied under the Agreement shall be written in English, and the Agreement shall be construed and interpreted in accordance with English language.

29.13.2 If any of the agreements, correspondence, communications or documents are prepared in any language other than English, the English translation of such agreements, correspondence, communications or documents shall prevail in matters of interpretation.

## **29.14 Breach of Obligations**

29.14.1 The Parties acknowledge that a breach of any of the obligations contained herein would result in injuries. The Parties further acknowledge that the amount of the liquidated damages or the method of calculating the liquidated damages specified in this Agreement is a genuine and reasonable pre-estimate of the damages that may be suffered by the non-defaulting party in each case specified under this Agreement.

## **29.15 Nomination Restriction**

29.15.1 Notwithstanding anything contained to the contrary in this Agreement, wherever a reference is made to the right of the Procurers to nominate a third Party to receive benefits under this Agreement, such third Party shall have a financial standing comparable to that of the Procurer in question.

## **29.16 Commercial Acts**

29.16.1 The Procurers and Seller unconditionally and irrevocably agree that the execution, delivery and performance by each of them of this Agreement and any other RFP Documents to which it is a Party constitute private and commercial acts rather than public or governmental acts.

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## **29.17** Restriction of Shareholders / Owners' Liability

29.17.1 Parties expressly agree and acknowledge that none of the shareholders of the Parties hereto shall be liable to the other Parties for any of the contractual obligations of the concerned Party under this Agreement. Further, the financial liabilities of the shareholder/s of each Party to this Agreement, shall be restricted to the extent provided in the Indian Companies Act, 1956.

## **29.18** Taxes and Duties

- 29.18.1 The Seller shall bear and promptly pay all statutory taxes, duties, levies and cess, assessed/ levied on the Seller, contractors or their employees, that are required to be paid by the Seller as per the Law in relation to the execution of the Agreement and for supplying power as per the terms of this Agreement.
- 29.18.2 Procurers shall be indemnified and held harmless by the Seller against any claims that may be made against Procurers in relation to the matters set out in Article 15.18.1.
- 29.18.3 Procurers shall not be liable for any payment of, taxes, duties, levies, cess whatsoever for discharging any obligation of the Seller by the Procurers on behalf of Seller or its personnel, provided the Seller has consented in writing to Procurers for such work, which consent shall not be unreasonably withheld.

## **29.19** No Consequential or Indirect Losses

29.19.1 The liability of the Seller and the Procurers shall be limited to that explicitly provided in this Agreement.

Provided that notwithstanding anything contained in this Agreement, under no event shall the Procurers or the Seller claim from one another any indirect or consequential losses or damages.

## **29.20** Discretion

Except where this Agreement expressly requires a Party to act fairly or reasonably, a Party may exercise any discretion given to it under this Agreement in any way it deems fit.

## **29.21** Order of priority in application

In case of inconsistencies between the agreements executed between the Parties, applicable Law including rules and regulations framed thereunder, the order of priority as between them shall be the order in which they are placed below::

- applicable Law, rules and regulations framed thereunder,
- this Agreement

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## 29.22 Independent Entity

29.22.1 The Seller shall be an independent entity performing its obligations pursuant to the Agreement.

29.22.2 Subject to the provisions of the Agreement, the Seller shall be solely responsible for the manner in which its obligations under this Agreement are to be performed. All employees and representatives of the Seller or contractors engaged by the Seller in connection with the performance of the Agreement shall be under the complete control of the Seller and shall not be deemed to be employees, representatives, contractors of Procurers and nothing contained in the Agreement or in any agreement or contract awarded by the Seller shall be construed to create any contractual relationship between any such employees, representatives or contractors and the Procurers.

## 29.23 *Fraudulent and Corrupt Practices*

29.23.1 The Seller and their respective officers, employees, agents and advisers shall observe the highest standard of ethics during the subsistence of this Agreement. Notwithstanding anything to the contrary contained in the Agreement, the Procurers may terminate the Agreement without being liable in any manner whatsoever to the Seller, if it determines that the Seller has, directly or indirectly or through an agent, engaged in corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice in the Bid process. In such an event, the Procurers shall forfeit the bid bond, without prejudice to any other right or remedy that may be available to the Procurers hereunder or subsistence otherwise.

29.23.2 Without prejudice to the rights of the Procurers under Article 15.23.1 hereinabove and the rights and remedies which the Procurers may have under this Agreement, if a Seller is found by the Procurers to have directly or indirectly or through an agent, engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice during the Bid process, or after the issue of LOI or after the execution of the PPA, the Procurers may terminate the Agreement without being liable in any manner whatsoever to the Seller. Further, in such an event, the Procurers shall forfeit the Contract Performance Guarantee.

29.23.3 Further, the Seller shall not be eligible to participate in any tender or RFP issued by the Procurer(s) during a period of 2 (two) years from the date such Seller is found by the Procurer(s) to have directly or indirectly or through an agent, engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practices, as the case may be.

29.23.4 For the purposes of this Article 15.23, the following terms shall have the meaning hereinafter respectively assigned to them:

**(a) "corrupt practice" means (i) the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence the actions of any person connected with the Bid process (for avoidance of doubt, offering of employment to or employing or engaging in any manner whatsoever, directly or indirectly, any official of the Procurers who is or has been**

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associated or dealt in any manner, directly or indirectly with the Bid process or the LOI or has dealt with matters concerning the PPA or arising there from, before or after the execution thereof, at any time prior to the expiry of one year from the date such official resigns or retires from or otherwise ceases to be in the service of the Procurers, shall be deemed to constitute influencing the actions of a person connected with the Bid Process); or (ii) engaging in any manner whatsoever, whether during the Bid Process or after the issue of the LOI or after the execution of the PPA, as the case may be, any person in respect of any matter relating to the Power Station or the LOI or the PPA, who at any time has been or is a legal, financial or technical adviser of the Procurers in relation to any matter concerning the Project;

(b) “fraudulent practice” means a misrepresentation or omission of facts or suppression of facts or disclosure of incomplete facts, in order to influence the Bid process;

(c) “coercive practice” means impairing or harming, or threatening to impair or harm, directly or indirectly, any person or property to influence any person’s participation or action in the Bid process;

(d) “undesirable practice” means (i) establishing contact with any person connected with or employed or engaged by the Procurer(s) with the objective of canvassing, lobbying or in any manner influencing or attempting to influence the Bid process; or (ii) having a conflict of interest; and

(e) “restrictive practice” means forming a cartel or arriving at any understanding or arrangement among bidders with the objective of restricting or manipulating a full and fair competition in the Bid process

## **29.24 Compliance with Law**

Despite anything contained in this Agreement but without prejudice to this Article, if any provision of this Agreement shall be in deviation or inconsistent with or repugnant to the provisions contained in the Electricity Act, 2003, or any rules and regulations made thereunder, such provision of this Agreement shall be deemed to be amended to the extent required to bring it into compliance with the aforesaid relevant provisions as amended from time to time.

IN WITNESS WHEREOF the Parties have caused the Agreement to be executed through their duly authorized representatives as of the date and place set forth above.

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For and on behalf of  
[Procurer]

Name, Designation and Address

Signature with seal

Witness:

1.

2.

For and on behalf of  
[Procurers]

Signature with seal

Witness:

1.

2.

For and on behalf of  
[Procurers]

Signature with seal

Witness:

1.

2.

For and on behalf of  
[Seller]

Name, Designation and Address

Signature with seal

Witness:

1.

2.

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**4** SCHEDULE 1: NAMES AND DETAILS OF THE PROCURER(S)

Sl. No.	Name of the Procurer(s)	Address of the Registered Office of Procurer(s)	Law under which incorporated	Contracted Capacity (MW)	Delivery Point <sup>14</sup>
<b>1</b>	<b>Jaipur Vidyut Vitran Nigam Ltd</b>		<b>Companies Act 1956</b>		
<b>2</b>	<b>Jodhpur Vidyut Vitran Nigam Ltd</b>		<b>Companies Act 1956</b>		
<b>3</b>	<b>Ajmer Vidyut Vitran Nigam Ltg</b>		<b>Companies Act 1956</b>		

<sup>14</sup> Procurer / Authorized Representative to insert the details of the Delivery Point(s) including the names of the place, district and State in which the Delivery Point(s) is located

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5 SCHEDULE 2: CALCULATION OF 'X' DAYS

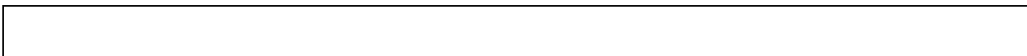
[\(Refer Article 8.5.8\)](#)

Percentage of Monthly Invoice which is the subject of default under Article 8.4 as notified in the Notice ( issued under Article 8.5.2) relating to the present occurrence	Number of times a Notice has been issued under Article 8.5.2 to the defaulting Procurer prior to present occurrence			
	1 <sup>st</sup> time	2 <sup>nd</sup> time	3 <sup>rd</sup> time	4 <sup>th</sup> time <a href="#">and onwards</a>
Less than 25%	x = 20 days	x = 25 days	x = 40 days	x = 60 days
25% to 30%	x = 20 days	x = 30 days	x = 45 days	x = 65 days
More than 30% to 35%	x = 20 days	x = 35 days	x = 50 days	x = 70 days
More than 35% to 40%	x = 20 days	x = 40 days	x = 55 days	x = 75 days
More than 40%	x = 20 days	x = 45 days	x = 60 days	x = <a href="#">90</a> days

**6**     *SCHEDULE 3: AVAILABILITY FACTORS*

**13.1** The following matters shall be determined as per the provisions of the Grid Code and ABT:

- g) Availability declaration and calculation of Availability or Availability Factor;
- h) Requirement for spinning reserves;
- i) Procedure for revision of Availability;
- j) Consequences of failure to demonstrate capacity or misdeclarations of capacity;
- k) Scheduling and Dispatch; and
- l) Other matters which may be related to Availability or Availability Factor.



14 SCHEDULE 4: TARIFF

### 14.1 General

- v) The method of determination of Tariff Payments for any Contract Year during the Term of Agreement shall be in accordance with this Schedule.
- vi) The Tariff shall be paid in two parts comprising of Capacity Charge and Energy Charge as mentioned in Schedule 8 of this Agreement.
- vii) For the purpose of payments, the Tariff will be Quoted Tariff as specified in Schedule 8, duly escalated as provided in Schedule 6 for the applicable Contract Year .
- viii) The full Capacity Charges shall be payable based on the Contracted Capacity at Normative Availability and Incentive shall be provided for Availability beyond ninety percentage (90%)] as provided in this Schedule. In case of Availability being lower than the Normative Availability, the Capacity Charges shall be payable on proportionate basis in addition to the penalty to be paid by the Seller as provided in this Schedule.

### 14.2 Monthly Tariff Payment

#### 14.2.1 Components of Monthly Tariff Payment

The Monthly Bill for any Month in a Contract Year shall consist of the following:

- v) Monthly Capacity Charge payment in accordance with Clause 4.2.2 of Schedule 4;
- vi) Monthly Energy Charge for Scheduled Energy in accordance with Clause 4.2.3 of Schedule 4;
- vii) Incentive determined in accordance with Clause 4.2.4 of Schedule 4 (applicable on a cumulative basis and included in each Monthly Bill);
- viii) Penalty determined in accordance with Clause 4.2.5 of Schedule 4 (applicable on a cumulative basis and included in each Monthly Bill );

#### 14.2.2 Monthly Capacity Charge Payment (Applicable for all categories of power generation source)

14.2.2.1 The Monthly Capacity Charge payment for any Month m in a Contract Year n shall be calculated as below:

If CAA >= NA,

$$\text{FCm} = \sum_i (\text{NA} * \text{AFCyn} * \text{CC} * \text{L} * \text{Ncontract} / 24) - \sum \text{C}(m-1)$$

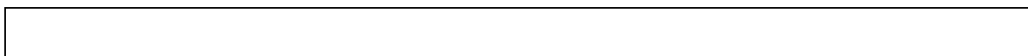
Else:

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$$\underline{\underline{FCm}} = \sum_i (\underline{\underline{AFCyn}} * \underline{\underline{AA}} * \underline{\underline{CC}} * \underline{\underline{L}} * \underline{\underline{Ncontract}} / 24) - \sum C(m-1)$$

where:

- m) FCm is the Capacity Charge payment for the Month m (in Rupees)
- n) ∑i is the summation of all the relevant values separately for each Settlement Period from the start of the Contract Year “n” in which Month “m” occurs up to and including Month “m”
- o) AFCyn is the Capacity Charge and is sum of a) Payable Escalable Capacity Charges AEFCyn and b) Payable Non Escalable Capacity Charges ANFCyn for the Month “m” in the Contract Year “n” (in Rs/ kWh) in which such month “m” occurs and computed as mentioned hereunder:
- p) AEFCyn is the Payable Escalable Capacity Charges for Month “m” in the Contract Year “n”, expressed in Rs/ kWh and is equal to the Quoted Escalable Capacity Charges as provided in Schedule 8 for the first Contract Year and for subsequent Contract Years duly escalated by the following formula:
- $$\underline{\underline{AEFCyn}} = \underline{\underline{QAEFCyn}} * \underline{\underline{p}} / \underline{\underline{q}}$$
- where,
- iv. QAEFCyn is the Quoted Escalable Capacity Charges (in Rs/ kWh) shall be taken as at the end of the previous Contract Year (n-1);
- v. p is the Escalation Index as per Schedule 6 at the beginning of the Month “m”(expressed as a number);
- vi. q is the Escalation Index as per Schedule 6 (expressed as a number);
- q) ANFCyn is the Payable Non Escalable Capacity Charges for the Month “m”, expressed in Rupees/kWh and is equal to the Quoted Non Escalable Capacity Charges for the Contract Year in which such Month “m” occurs, as provided in Schedule 8;
- r) CAA is the cumulative Availability, as per REA, from the first day of the Contract Year “n” in which Month “m” occurs up to and including Month “m” (expressed in percentage);



- s) AA is the Availability, as per REA, in the relevant Settlement Period (expressed as a percentage of Contracted Capacity in such Settlement Period), expressed as a percentage;
- t) CC is the Contracted Capacity in the relevant Settlement Period (expressed in kW);
- u) L is the number of minutes in relevant Settlement Period, as divided by total number of minutes in one hour, (expressed as hours);
- v) Ncontract is the number of hours of power supply in a day, contracted as per the PPA (24 in the case of base load and seasonal load requirement);
- w) NA Normative Availability; and
- x) ΣC(m-1) is the cumulative Capacity Charge payable from the first day of the Contract Year “n” in which Month “m” occurs up to and including Month “m-1” but not including Month “m”, (in Rupees).

**Provided, no Monthly Capacity Charges shall be paid for the Settlement Period during which the RLDC has not allowed the operation of the Power Station due to [Insert “Seller’s” if Seller is NOT a Trading Licensee, or “Developer’s” if Seller is a Trading Licensee] failure to operate it as per the provisions of Grid Code and such Settlement Period shall not be considered during calculation of Monthly Capacity Charge payment.**

#### 14.2.3 **Monthly Energy Charges**

14.2.3.1 The Monthly Energy Charges to be paid to the Seller shall be determined considering the supply from the type of plant, as detailed hereunder:

**[Select in case of Seller has chosen domestic coal-based plants having captive coal block or linkage based coal, as source for its supply of power]**

14.2.3.2 The Monthly Energy Charges (in Rupees) for Month “m” shall be calculated as under:

$$\text{MEPm} = \text{AEOm} * \text{MEPn}$$

where:

d) **MEPm is the Monthly Energy Charges for Month m (in Rs.);**

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- e) **AEO<sub>m</sub>** is the Scheduled Energy for the Month m (in kWh); and
- f) MEP<sub>n</sub> is the Energy Charge, in Rs/ kWh, and is expressed as below:

MEP<sub>n</sub> is the sum of the following: (i) Payable Escalable Energy Charges (MEEP<sub>n</sub>), (ii) Payable Escalable Inland Transportation Charges (MEITP<sub>n</sub>), (iii) Payable Non Escalable Energy Charges (MNEEP<sub>n</sub>) and (iv) Payable Non Escalable Inland Transportation Charges (MNEITP<sub>n</sub>) for the Contract Year “n” in which Month “m” occurs and computed as mentioned hereunder:

where:

$$\underline{MEEP_n = QMEEP_n * p(EE)/q(EE)}$$

$$\underline{MEITP_n = QMEITP_n * p(ET)/q(ET)}$$

where:

- i) QMEEP<sub>n</sub> for the first Contract Year in which month “m” occurs is the Quoted Escalable Energy Charges as per Schedule 8 and for subsequent Contract Years it shall be taken as at the end of the previous Contract Year (n-1);
- j) QMEITP<sub>n</sub> for the first Contract Year in which month “m” occurs is the Quoted Escalable Inland Transportation Charges as per Schedule 8 and for subsequent Contract Years it shall be taken as at the end of the previous Contract Year (n-1);
- k) p(EE) is the Escalation Index as per Schedule 6 at the beginning of Month “m” (expressed as a number);
- l) q(EE) is the Escalation Index as per Schedule 6 (expressed as a number);
- m) p(ET) is the Escalation Index for Inland Transportation Charges as per Schedule 6 at the beginning of Month “m” (expressed as a number);
- n) q(ET) is the Escalation Index for Inland Transportation Charges as per Schedule 6 (expressed as a number);

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- o) MNEEPn is the Payable Non Escalable Energy Charges of the Contract Year “n” in which Month “m” occurs expressed in Rs/ kWh and is equal to the Quoted Non Escalable Energy Charges of the Contract Year “n” in which Month “m” occurs, as provided in Schedule 8; and
- p) MNEITPn is the Payable Non Escalable Inland Transportation Charges of the Contract Year “n” in which Month “m” occurs expressed in Rs/ kWh and is equal to the Quoted Non Escalable Inland Transportation Charges of the Contract Year “n” in which Month “m” occurs, as provided in Schedule 8.

[Select in case of Seller has chosen coal-based plants using imported coal, as generation source]

14.2.3.3 The Monthly Energy Charges (in Rupees) for Month “m” shall be calculated as under:

$$\mathbf{MEPm = AEOm * MEPn}$$

where:

- e) MEPm is the Monthly Energy Charges for Month m (in Rs.);
- f) AEOm is the Scheduled Energy for the Month m (in kWh); and
- g) MEPn is the Energy Charge, in Rs/ kWh, and is expressed as below:

MEPn is the sum of the following:

- (ix) Payable Escalable Energy Charges (MEEPn),
- (x) Payable Escalable Overseas Transportation Charges (MEOTPn),
- (xi) Payable Escalable Inland Transportation Charges (MEITPn),
- (xii) Payable Escalable Fuel Handling Charges (MEFHPn),
- (xiii) Payable Non Escalable Energy Charges (MNEEPn),
- (xiv) Payable Non Escalable Overseas Transportation Charges (MNEOTPn),
- (xv) Payable Non Escalable Inland Transportation Charges (MNEITPn), and

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- (xvi) Payable Non Escalable Fuel Handling Charges (MNEFHPn)  
for the Contract Year “n” in which Month “m” occurs and computed as  
mentioned hereunder:

$$\mathbf{MEEPn = QMEEPn * p/q * FX}$$

where:

- f) QMEEPn for the first Contract Year in which month “m” occurs is the Quoted Escalable Energy Charges as per Schedule 8 (in US\$/ kWh) and for subsequent Contract Years it shall be taken as at the end of the previous Contract Year (n-1);
- g) p is the Escalation Index at the beginning of the Month “m” and escalated as per Schedule 6;
- h) q is the Escalation Index as per Schedule 6;
- i) and
- j) FX shall be the simple average of SBI TT buying rate (for Rs/ US\$) for last fifteen (15) days prior to the first day of the Month “m” for which such exchange rates are published by SBI.

$$\mathbf{MEOTPn = QMEOTPn * p(OT) / q(OT) * FX}$$

where:

- h) QMEOTPn for the first Contract Year in which month “m” occurs is the Quoted Escalable Overseas Transportation Charges as per Schedule 8 (in US\$/ kWh) and for subsequent Contract Years it shall be taken as at the end of the previous Contract Year (n-1);
- i) p(OT) is the Escalation Index at the beginning of the Month “m” for Overseas Transportation Charges and escalated as per Schedule 6 (expressed as a number);
- j) q(OT) is the Escalation Index for Overseas Transportation Charges as per Schedule 6(expressed as a number); and
- k) FX shall be the simple average of SBI TT buying rate (for Rs/ US\$) for last fifteen (15) days prior to the first day of the Month “m” for which such exchange rates are published by SBI.

$$\mathbf{MEITPn = QMEITPn * p(IT) / q(IT)}$$

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where:

- l) QMEITP<sub>n</sub> for the first Contract Year in which month “m” occurs is the Quoted Escalable Inland Transportation Charges as per Schedule 8 (in Rs/ kWh) and for subsequent Contract Years it shall be taken as at the end of the previous Contract Year (n-1);
- m) p(IT) is the Escalation Index at the beginning of the Month “m” for Inland Transportation Charges and escalated as per Schedule 6 (expressed as a number);
- n) q(IT) is the Escalation Index for Inland Transportation Charges as per Schedule 6 (expressed as a number); and

∴

$$\underline{\text{MEFHP}_n = \text{QMEFHP}_n * p(\text{FH}) / q(\text{FH})}$$

where:

- d) QMEFHP<sub>n</sub> for the first Contract Year in which month “m” occurs is the Quoted Escalable Fuel Handling Charges as per Schedule 8 (in Rs/ kWh) and for subsequent Contract Years it shall be taken as at the end of the previous Contract Year (n-1);
- e) p(FH) is the Escalation Index at the beginning of the Month “m” for Fuel Handling Charges and escalated as per Schedule 6 (expressed as a number); and
- f) q(FH) is the Escalation Index for Fuel Handling Charges as per Schedule 6 (expressed as a number).

$$\underline{\text{MNEEP}_n = \text{QMNEEP}_n * \text{FX}}$$

where:

- c) QMNEEP<sub>n</sub> is the Quoted Non Escalable Energy Charges of the Contract Year “n” in which Month “m” occurs expressed in US\$/ kWh and is equal to the Quoted Non Escalable Energy Charges of the Contract Year “n” in which Month “m” occurs, as provided in Schedule 8; and
- d) FX shall be the simple average of SBI TT buying rate (for Rs/ US\$) for last fifteen (15) days prior to the first day of the Month “m” for which such exchange rates are published by SBI.

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$$\underline{\text{MNEOTP}_n = \text{QMNEOTP}_n * \text{FX}}$$

where:

- c) QMNEOTP<sub>n</sub> is the Quoted Non Escalable Overseas Transportation Charges of the Contract Year “n” in which Month “m” occurs expressed in US\$/ kWh and is equal to the Quoted Non Escalable Overseas Transportation Charges of the Contract Year “n” in which Month “m” occurs, as provided in Schedule 8; and
- d) FX shall be the simple average of SBI TT buying rate (for Rs/ US\$) for last fifteen (15) days prior to the first day of the Month “m” for which such exchange rates are published by SBI.

MNEITP<sub>n</sub> is the Payable Non Escalable Inland Transportation Charges of the Contract Year “n” in which Month “m” occurs expressed in Rs/ kWh and is equal to the Quoted Non Escalable Inland Transportation Charges of the Contract Year “n” in which Month “m” occurs, as provided in Schedule 8.

MNEFHP<sub>n</sub> is the Payable Non Escalable Fuel Handling Charges of the Contract Year “n” in which Month “m” occurs expressed in Rs/ kWh and is equal to the Quoted Non Escalable Fuel Handling Charges of the Contract Year “n” in which Month “m” occurs, as provided in Schedule 8.

**[Select in case the Seller has chosen gas-based plants having domestic (pipeline) gas, as source for its supply of power]**

14.2.3.4 The Monthly Energy Charges (in Rupees) for Month “m” shall be calculated as under:

$$\underline{\text{MEP}_m = \text{AEOM}_m * \text{MEP}_n}$$

where:

- d) MEP<sub>m</sub> is the Monthly Energy Charges for Month m (in Rs.);
- e) AEOM<sub>m</sub> is the Scheduled Energy for the Month m (in kWh); and
- f) MEP<sub>n</sub> is the Energy Charge, in Rs/ kWh, and is expressed as below:

MEP<sub>n</sub> is the sum of the following:

--

- (v) Payable Escalable Energy Charges (MEEP<sub>n</sub>),
- (vi) Payable Escalable Inland Transportation Charges (MEITP<sub>n</sub>),
- (vii) Payable Non Escalable Energy Charges (MNEEP<sub>n</sub>) and
- (viii) Payable Non Escalable Inland Transportation Charges (MNEITP<sub>n</sub>)  
for the Contract Year “n” in which Month “m” occurs and computed as  
mentioned hereunder:

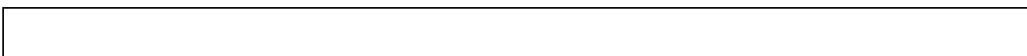
where:

$$\mathbf{MEEP_n = QMEEP_n * p(EE)/q(EE)}$$

$$\mathbf{MEITP_n = QMEITP_n * p(IT)/q(IT)}$$

where:

- g) QMEEP<sub>n</sub> for the first Contract Year in which month “m” occurs is the Quoted Escalable Energy Charges (in Rs/ kWh) as per Schedule 8 and for subsequent Contract Years it shall be taken as at the end of the previous Contract Year (n-1);
- h) QMEITP<sub>n</sub> for the first Contract Year in which month “m” occurs is the Quoted Escalable Inland Transportation Charges (in Rs/ kWh) as per Schedule 8 and for subsequent Contract Years it shall be taken as at the end of the previous Contract Year (n-1);
- i) p(EE) is the Escalation Index at the beginning of the Month “m” for Energy Charges and escalated as per Schedule 6 (expressed as a number);
- j) q(EE) is the Escalation Index for Energy Charges as per Schedule 6 (expressed as a number);
- k) p(IT) is the Escalation Index at the beginning of the Month “m” for Inland Transportation Charges and escalated as per Schedule 6 (expressed as a number); and
- l) q(IT) is the Escalation Index for Inland Transportation Charges escalated as per Schedule 6 (expressed as a number).



**MNEEPn** is the Payable Non Escalable Energy Charges of the Contract Year “n” in which Month “m” occurs expressed in Rs/ kWh and is equal to the Quoted Non Escalable Energy Charges of the Contract Year “n” in which Month “m” occurs, as provided in Schedule 8

**MNEITPn** is the Payable Non Escalable Inland Transportation Charges of the Contract Year “n” in which Month “m” occurs expressed in Rs/ kWh and is equal to the Quoted Non Escalable Inland Transportation Charges of the Contract Year “n” in which Month “m” occurs, as provided in Schedule 8.

[Select in case of Seller has chosen gas-based plants using imported R-LNG, as generation source]

14.2.3.5 The Monthly Energy Charges (in Rupees) for Month “m” shall be calculated as under:

$$\underline{\mathbf{MEPm = AEOm * MEPn}}$$

where:

- c) MEPm is the Monthly Energy Charges for Month m (in Rs.);
- d) AEOm is the Scheduled Energy for the Month m (in kWh);
- h) MEPn is the Energy Charge, in Rs/ kWh, and is expressed as below:

MEPn is the sum of the following:

- (ix) Payable Escalable Energy Charges (MEEPn),
- (x) Payable Escalable Overseas Transportation Charges (MEOTPn),
- (xi) Payable Escalable Inland Transportation Charges (MEITPn),
- (xii) Payable Escalable Fuel Handling Charges (MEFHPn),
- (xiii) Payable Non Escalable Energy Charges (MNEEPn),
- (xiv) Payable Non Escalable Overseas Transportation Charges (MNEOTPn)

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(xv) Payable Non Escalable Inland Transportation Charges (MNEITPn), and

(xvi) Payable Non Escalable Fuel Handling Charges (MNEFHPn)

for the Contract Year “n” in which Month “m” occurs and computed as mentioned hereunder:

$$\mathbf{MEEPn = QMEEPn * p(EE) / q(EE) * FX}$$

where:

- e) QMEEPn for the first Contract Year in which month “m” occurs is the Quoted Escalable Energy Charges as per Schedule 8 (in US\$/ kWh) and for subsequent Contract Years it shall be taken as at the end of the previous Contract Year (n-1);
- f) P(EE) is the Escalation Index at the beginning of the Month “m” for Energy Charges and escalated as per Schedule 6 (expressed as a number);
- g) q(EE) is the Escalation Index for Energy Charges as per Schedule 6(expressed as a number); and
- h) FX shall be the simple average of SBI TT buying rate (for Rs/ US\$) for last fifteen (15) days prior to the first day of the Month “m” for which such exchange rates are published by SBI.

$$\mathbf{MEOTPn = QMEOTPn * p(OT) / q(OT) * FX}$$

where:

- e) QMEOTPn for the first Contract Year in which month “m” occurs is the Quoted Escalable Overseas Transportation Charges as per Schedule 8 (in US\$/ kWh) and for subsequent Contract Years it shall be taken as at the end of the previous Contract Year (n-1);
- f) p(OT) is the Escalation Index at the beginning of the Month “m” for Overseas Transportation Charges and escalated as per Schedule 6 (expressed as a number);
- g) q(OT) is the Escalation Index for Overseas Transportation Charges as per Schedule 6 (expressed as a number); and





- h) FX shall be the simple average of SBI TT buying rate (for Rs/ US\$) for last fifteen (15) days prior to the first day of the Month “m” for which such exchange rates are published by SBI.

$$\underline{\mathbf{MEITPn = QMEITPn * p(IT) / q(IT)}}$$

where:

- g) QMEITPn for the first Contract Year in which month “m” occurs is the Quoted Escalable Inland Transportation Charges as per Schedule 8 (in Rs/ kWh) and for subsequent Contract Years it shall be taken as at the end of the previous Contract Year (n-1);
- h) p(IT) is the Escalation Index at the beginning of the Month “m” for Inland Transportation Charges and escalated as per Schedule 6 (expressed as a number); and
- i) q(IT) is the Escalation Index for Inland Transportation Charges as per Schedule 6 (expressed as a number).

$$\underline{\mathbf{MEFHPn = QMEFHPn * p(FH) / q(FH)}}$$

where:

- j) QMEFHPn for the first Contract Year in which month “m” occurs is the Quoted Escalable Fuel Handling Charges as per Schedule 8 (in Rs/ kWh) and for subsequent Contract Years it shall be taken as at the end of the previous Contract Year (n-1);
- k) p(FH) is the Escalation Index at the beginning of the Month “m” for Fuel Handling Charges and escalated as per Schedule 6 (expressed as a number); and
- l) q(FH) is the Escalation Index for Fuel Handling Charges as per Schedule 6 (expressed as a number).

$$\underline{\mathbf{MNEEPn = QMNEEPn * FX}}$$

where:

- c) QMNEEPn is the Quoted Non Escalable Energy Charges of the Contract Year “n” in which Month “m” occurs expressed in US\$/ kWh and is equal to the Quoted Indexed/ Non Escalable Energy Charges of the Contract Year “n” in which Month “m” occurs, as provided in Schedule 8

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- d) FX shall be the simple average of SBI TT buying rate (for Rs/ US\$) for last fifteen (15) days prior to the first day of the Month “m” for which such exchange rates are published by SBI

$$\mathbf{MNEOTP_n = QMNEOTP_n * FX}$$

where:

- c) QMNEOTP<sub>n</sub> is the Quoted Non Escalable Overseas Transportation Charges of the Contract Year “n” in which Month “m” occurs expressed in US\$/ kWh and is equal to the Quoted Non Escalable Overseas Transportation Charges of the Contract Year “n” in which Month “m” occurs, as provided in Schedule 8

- d) FX shall be the simple average of SBI TT buying rate (for Rs/ US\$) for last fifteen (15) days prior to the first day of the Month “m” for which such exchange rates are published by SBI

MNEITP<sub>n</sub> is the Payable Non Escalable Inland Transportation Charges of the Contract Year “n” in which Month “m” occurs expressed in Rs/ kWh and is equal to the Quoted Non Escalable Inland Transportation Charges of the Contract Year “n” in which Month “m” occurs, as provided in Schedule 8

MNEFHP<sub>n</sub> is the Payable Non Escalable Fuel Handling Charges of the Contract Year “n” in which Month “m” occurs expressed in Rs/ kWh and is equal to the Quoted Non Escalable Fuel Handling Charges of the Contract Year “n” in which Month “m” occurs, as provided in Schedule 8

[Select in case of Seller has chosen hydro-electric plant as the generation source]

14.2.3.6 The Monthly Energy Charges (in Rupees) for Month “m” shall be equal to the Quoted Energy Charges of the Contract Year “n” in which Month “m” occurs, as provided in Schedule 8

#### 14.2.4 **Contract Year Energy Incentive Payment**

14.2.4.1 If and to the extent the Availability in a Contract Year exceeds Normative Availability, an incentive at the rate of forty (40%) of the Quoted Non Escalable Capacity Charges (in Rs./kWh) for such Contract Year mentioned in Schedule 8 subject to a maximum of twenty five (25) paisa /kWh, shall be allowed on the energy (in kWh) corresponding to the Availability in excess of ninety percent (90%).

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14.2.5 **Contract Year Penalty for Availability below eighty percent (80%)] during the Contract Year**

14.2.5.1 In case the Availability for a Contract Year is less than eighty percent (80%)], the Seller shall pay a penalty at the rate of twenty percent (20%) of the simple average Capacity Charge (in Rs./kWh) for all months in the Contract Year applied on the energy (in kWh) corresponding to the difference between eighty percent (80%)],and Availability during such Contract Year.

### **14.3 Deviation from the Schedule**

14.3.1 Variation between Scheduled Energy and actual energy at the Interconnection Point shall be accounted for through Unscheduled Interchange (UI) as per provisions of the Grid Code and ABT.

### **14.4 Transmission/Wheeling Charges and RLDC/ SLDC Charges**

14.4.1 The payment of Transmission Charges / Wheeling Charges to the CTU/ STU, from the Injection Point to the Delivery Point shall be paid by the Seller and would be reimbursed by the Procurers.

14.4.2 The payment of the RLDC/ SLDC charges shall be the responsibility of the Procurers.

### **14.5 Penalty and rights relating to minimum guaranteed quantity of Fuel [applicable in case of linkage coal-based Power Station or imported coal based Power Station or imported LNG based Power Station].**

14.5.1 In case [Insert “Seller” if Seller is NOT a Trading Licensee, or “Developer” if Seller is a Trading Licensee] has to pay penalty to the fuel supplier for not purchasing the minimum guaranteed quantity of Fuel mentioned in the Fuel Supply Agreement and if during that Contract Year, Availability of the Power Station of the .....[Insert “Seller” if Seller is NOT a Trading Licensee, or “Developer” if Seller is a Trading Licensee] is greater than the Minimum Offtake Guarantee but all the Procurers taken together have not scheduled energy corresponding to such Minimum Off-take Guarantee during that Contract Year, then Seller will raise an invoice for the lower of the following amounts, on the Procurers, :

- iii) penalty paid to the fuel supplier under the Fuel Supply Agreement in that Contract Year, along with documentary proof for payment of such penalty, or***

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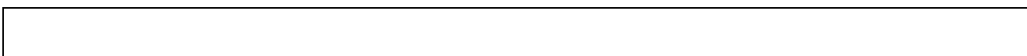
*iv) an amount corresponding to twenty percent (20%) of cumulative Monthly Capacity Charge Payment (in Rs.) made by the Procurer for all the months in that Contract Year multiplied by (1- X/Y) where:*

*X is the Scheduled Energy during the Contract Year (in kWh); and*

*Y is the Scheduled Energy corresponding to Minimum Offtake Guarantee for the Procurer during the Contract Year (in kWh).*

The amount calculated as above shall be applicable for each Procurer who has scheduled energy less than energy corresponding to Minimum Offtake Guarantee and shall be in proportion to difference between energy scheduled by such Procurer assuming offtake corresponding to Minimum Offtake Guarantee and its Scheduled Energy.

*Provided, within ten (10) days of the end of each Month after the Delivery Date, the Seller shall provide a statement to the Procurers, providing a comparison of the cumulative Scheduled Energy for all previous Months during the Contract Year with the Minimum Offtake Guarantee of the Procurers. Further, such statement shall also list out the deficit, if any, in the Fuel offtake under the Fuel Supply Agreement, due to cumulative dispatch being less than the Minimum Offtake Guarantee. In case of a Fuel offtake deficit, within a period of fifteen (15) days from the date of receipt of the above statement from the Seller and after giving a prior written notice of at least seven (7) days to the Seller, the concerned Procurer shall have the right to avail such deficit at the same price at which such deficit fuel was available to the Seller under the Fuel Supply Agreement and to sell such deficit to third parties. In case the Procurer(s) exercises such right to avail Fuel equivalent to such deficit, there shall be no liability on the Procurer*



*for payment of penalty on account of Minimum Offtake Guarantee.*

**14.6** Tariff for the period prior to date of commencement of supply of power

14.6.1 The Tariff for the period prior to date of commencement of supply of power shall be the Quoted Tariff of the first Contract Year with escalation for relevant period only for energy charge.

**14.7** Settlement of Bills

14.7.1 The penalty of actual Availability shortfall during the Contract Year, deviation from the schedule, Transmission Charges and RLDC/ SLDC Charges, and penalty to be paid to fuel supplier will be settled as detailed in Clauses 4.2.2, 4.2.5, 4.3, 4.4 and 4.5 of this Schedule.

14.7.2 Notwithstanding anything contained in this agreement, no separate reimbursement shall be allowed for the cost of the secondary fuel.



**15 SCHEDULE 5: DETAILS OF GENERATION SOURCE AND SUPPLY OF POWER**

*(A) Details of generation source [to be reproduced exactly as in Format 4.13 of the Selected Bid of the Seller]*

**(Note: In case of Seller being an Trading Licensee, details in this format is to be furnished by the Bidder in relation to the supplier of power with whom the power purchase agreement has been executed by the Trading Licensee)**

Sl. No	Particulars	Details (as per Format 4.13 of the Selected Bid of Seller)			
22.	Location of power station (Specify place, district and state)				
23.	No. of existing/ proposed units and installed capacity of each unit (in MW)	Existing			
		Sl. No.	No. of Units	Installed Capacity	COD
		1.			
		2.			
		.....			
		Proposed			
		Sl. No.	No. of Units	Installed Capacity	Expected COD
		1.			
		2.			
		.....			
24.	<b>Primary Fuel</b>				
25.	<b>Dates of last major R&amp;M (unit-wise)</b>	<b>Applicable for existing units</b> S No. Date 1. 2. ...			
26.	<b>Duration of Fuel Supply Agreement(s) (FSA)</b>				
27.	<b>Quantum of power contracted with other purchasers, if any (in MW)</b>				
28.	<b>Details of surplus capacity (in MW)</b>				

*(B) Details of primary fuel [to be reproduced exactly as in Format 4.13 of the Selected Bid of the Seller]*

S. No	Particulars	Details (to be furnished by the Bidder)
1	Primary fuel	

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	(Insert as applicable: "Domestic coal/ Imported coal/ Domestic (pipeline) gas/ Imported gas (R-LNG)")	
2	<b>Fuel source</b> (Insert as applicable: "Coal India Limited (CIL) coal linkage/ domestic captive coal mine/ imported coal/ domestic (pipeline) gas/ imported gas (R-LNG)")	
3	<b>Fuel grade</b> (Applicable only in case of coal)	
4	Name of the CIL subsidiary from which coal is proposed to be sourced or name and location of the captive coal mine (as applicable)	
6	Bidder to insert the applicable price mechanism, based on whether the primary fuel is covered under: 4. Administered Price Mechanism ("APM"); or 5. Controlled and notified by an independent Regulator; or 6. Controlled and notified by the Government of India or Government of India Instrumentality. (Applicable only for gas)	

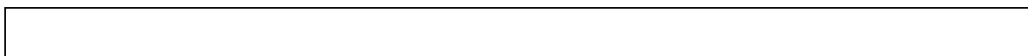
*(C) Details of Power Supply*

Sr. No	Particulars	
23.	Nature of Load	<b>Seasonal Load</b>

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**16 SCHEDULE 6: ESCALATION INDEX**

- 16.1.1 The index (“Escalation Index”) to be applied for escalation of Quoted Escalable Capacity Charges, Quoted Escalable Energy Charges, Quoted Escalable Inland Transportation Charges, Quoted Escalable Overseas Transportation Charges and Quoted Escalable Fuel Handling Charges shall be computed by assuming that as on the date of the Bid Deadline (for Quoted Escalable Energy Charges, Quoted Escalable Inland Transportation Charges, Quoted Escalable Overseas Transportation Charges and Quoted Escalable Fuel Handling Charges) and Scheduled Delivery Date (for Quoted Escalable Capacity Charges) or Revised Scheduled Delivery Date, as the case may be, the value of such Escalation Index is 100. Thereafter for each Month after the Bid Deadline (for Quoted Escalable Energy Charges, Quoted Escalable Inland Transportation Charges, Quoted Escalable Overseas Transportation Charges and Quoted Escalable Fuel Handling Charges) and Scheduled Delivery Date (for Quoted Escalable Capacity Charges) or Revised Scheduled Delivery Date, as the case may be, the value of the Escalation Index shall be computed by applying the per annum inflation rate specified by CERC for payment of Escalable (or indexed) Capacity Charge and Escalable Energy Charge, as per the provisions of this Agreement.
- 16.1.2 For the avoidance of doubt, it is clarified that if the prevailing inflation rate for Quoted Escalable Energy Charges specified by CERC is 4.7% per annum, then at the end of the first Month after the Bid Deadline, the value of the Escalation Index shall be 100.3917 [i.e.  $100 * (1 + 0.047/12)$ ]. The value of the Escalation Index at the end of the N<sup>th</sup> Month after the Bid Deadline shall be calculated as:  $100 * (1 + N*0.047/ 12)$  for Quoted Escalable Energy Charges.. The value of the inflation rate shall be modified as and when specified by the CERC and the base value (100 in this case) shall be modified at the beginning of each Contract Year to be the Escalation Index at the end of the previous Contract Year. The value of the Escalation Index shall be calculated up to the fourth decimal point.
- 16.1.3 The different per annum escalation rates will be specified by CERC for the following, which shall be revised only at the end of every six months:
- f) Quoted Escalable Capacity Charges;
  - g) Quoted Escalable Energy Charges separately for captive-coal based, linkage based coal, imported coal, domestic (pipeline) gas and imported R-LNG;
  - h) Quoted Escalable Inland Transportation Charges (except for hydro plants);
  - i) Quoted Escalable Overseas Transportation Charges, separately for imported coal and imported R-LNG; and
  - j) Quoted Escalable Fuel Handling Charges, separately for imported coal and imported R-LNG.
- 16.1.4 In case due to any reason, CERC discontinues the publication of any of the inflation rate(s) mentioned above, the Procurers and the Seller shall replace the above inflation





rate(s) with inflation rate(s) which shall be computed on the same basis as was being used by CERC to estimate their notified inflation rate.

## 17.1 Representations and Warranties by the Procurer(s)

**[Insert “The Procurer” in case of single Procurer or “Each Procurer” in case of multiple Procurers] hereby represents and warrants to and agrees with the Seller as follows and acknowledges and confirms that the Seller is relying on such representations and warranties in connection with the transactions described in this Agreement:**

### 17.1.1

- vii) The Procurer has all requisite powers and has been duly authorized to execute and consummate this Agreement;
- viii) This Agreement is enforceable against the Procurer in accordance with its terms;
- ix) The consummation of the transactions contemplated by this Agreement on the part of the Procurer will not violate any provision of nor constitute a default under, nor give rise to a power to cancel any charter, mortgage, deed of trust or lien, lease, agreement, license, permit, evidence of indebtedness, restriction, or other contract to which the Procurer is a party or to which the Procurer is bound, which violation, default or power has not been waived;
- x) The Procurer is not insolvent and no insolvency proceedings have been instituted, nor threatened or pending by or against the Procurer;
- xi) There are no actions, suits, claims, proceedings or investigations pending or, to the best of the Procurer’s knowledge, threatened in writing against the Procurer at law, in equity, or otherwise, and whether civil or criminal in nature, before or by, any court, commission, arbitrator or governmental agency or authority, and there are no outstanding judgments, decrees or orders of any such courts, commission, arbitrator or governmental agencies or authorities, which materially adversely affect its ability to comply with its obligations under this Agreement.
- xii) The quantum of Contracted Capacity of Procurer does not exceed the projected additional demand forecast for the next three (3) years, as required under the Bidding Guidelines. In case the quantum of Contracted Capacity of Procurer exceeds the additional demand forecast for the next three (3) years, the Procurer has already obtained the approval of the Appropriate Commission for the quantum of power proposed to be procured, as required under Para 3.1(i) of the Bidding Guidelines.

17.1.2 [Insert “The Procurer” in case of single Procurer or “Each Procurer” in case of multiple Procurers] makes all the representations and warranties above to be valid as on the date of this Agreement.

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## 17.2 Representation and Warranties of the Seller

17.2.1 The Seller hereby represents and warrants to and agrees with the Procurer(s) as follows and acknowledges and confirms that the Procurer(s) is/are relying on such representations and warranties in connection with the transactions described in this Agreement:

- vii) The Seller has all requisite power and has been duly authorized to execute and consummate this Agreement;
- viii) This Agreement is enforceable against the Seller in accordance with its terms;
- ix) The consummation of the transactions contemplated by this Agreement on the part of the Seller will not violate any provision of nor constitute a default under, nor give rise to a power to cancel any charter, mortgage, deed of trust or lien, lease, agreement, license, permit, evidence of indebtedness, restriction, or other contract to which the Seller is a party or to which the Seller is bound which violation, default or power has not been waived;
- x) The Seller is not insolvent and no insolvency proceedings have been instituted, or not threatened or pending by or against the Seller;
- xi) There are no actions, suits, claims, proceedings or investigations pending or, to the best of Seller's knowledge, threatened in writing against the Seller at law, in equity, or otherwise, and whether civil or criminal in nature, before or by, any court, commission, arbitrator or governmental agency or authority, and there are no outstanding judgments, decrees or orders of any such courts, commission, arbitrator or governmental agencies or authorities, which materially adversely affect its ability to supply power or to comply with its obligations under this Agreement.
- xii) The Seller/ Successful Bidder has neither made any statement nor provided any information in his Bid, which was materially inaccurate or misleading at the time when such statement was made or information was provided. Further, all the confirmations, undertakings, declarations and representations made in the Bid are true and accurate and there is no breach of the same.

17.2.2 The Seller makes all the representations and warranties above to be valid as on the date of this Agreement.

17.2.3 In the event that any of the representations and warranties made by the Seller in the Article above not true or are incorrect, the occurrence of such event would amount to a Seller Event of Default under Article 11.1 of this Agreement and the Procurer shall have the right to terminate this Agreement in accordance with Article 11 of this Agreement.

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**18**    *SCHEDULE 8: QUOTED TARIFF*  
**(Quoted Tariff from Format 4.10 of RFP of the Selected Bid to be inserted here)**

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**19 SCHEDULE 9: FORMAT OF THE CONTRACT PERFORMANCE GUARANTEE**

(To be on non-judicial stamp paper of appropriate value as per Stamp Act relevant to place of execution. Foreign entities submitting Bids are required to follow the applicable law in their country. To be provided separately in the name of the Procurer(s), in proportion to their Contracted Capacity, where applicable)

In consideration of the .....[Insert name of the Successful Bidder with address] agreeing to undertake the obligations under the PPA and the other RFP Documents and ..... [Insert name of Procurer](herein after referred to as Procurer), agreeing to execute the RFP Documents with the Successful Bidder for procurement of power on *long* term basis for meeting the requirements of the Procurer, the ..... [Insert name and address of the bank issuing the guarantee and address of the head office] (hereinafter referred to as "Guarantor Bank") hereby agrees unequivocally, irrevocably and unconditionally to pay to the Procurer at .....[Insert address of Procurer] forthwith on demand in writing from the Procurer or any officer authorized by it in this behalf, any amount up to and not exceeding Rupees ..... (Rs ..... ) only [Insert the amount of the bank guarantee computed on the basis of thirty (30) lakhs/MW with the respect to Contracted Capacity of the Procurer as per the terms of PPA on behalf of M/s. .... [Insert name of the Successful Bidder].

This guarantee shall be valid and binding on the Guarantor Bank up to and including .....[Insert date of validity of CPG] and shall in no event be terminable by notice or any change in the constitution of the Bank or the term of the PPA or by any other reasons whatsoever and our liability hereunder shall not be impaired or discharged by any extension of time or variations or alternations made, given, or agreed with or without our knowledge or consent, by or between parties to the respective agreement.

Our liability under this Guarantee is restricted to Rs. .... (Rs. .... only). Our Guarantee shall remain in force until ..... [Insert the date of validity of the CPG ]. The Procurer shall be entitled to invoke this Guarantee up to thirty (30) days of the last date of the validity of this Guarantee by issuance of a written demand to invoke this guarantee.

The Guarantor Bank hereby expressly agrees that it shall not require any proof in addition to the written demand from the Procurer, made in any format, raised at the above mentioned address of the Guarantor Bank, in order to make the said payment to the Procurer(s) .

The Guarantor Bank shall make payment hereunder on first demand without restriction or conditions and notwithstanding any objection by, ..... [Insert name of the Successful Bidder or the Seller] and/ or any other person. The Guarantor Bank shall not require the Procurer(s) to justify the invocation of this BANK GUARANTEE, nor shall the Guarantor Bank have any recourse against the Procurer(s) in respect of any payment made hereunder.

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**This BANK GUARANTEE shall be interpreted in accordance with the laws of India and the courts at ..... [Insert name(s) of city(ies)] shall have exclusive jurisdiction..**

**The Guarantor Bank represents that this BANK GUARANTEE has been established in such form and with such content that it is fully enforceable in accordance with its terms as against the Guarantor Bank in the manner provided herein.**

**This BANK GUARANTEE shall not be affected in any manner by reason of merger, amalgamation, restructuring, liquidation, winding up, dissolution or any other change in the constitution of the Guarantor Bank.**

**This BANK GUARANTEE shall be a primary obligation of the Guarantor Bank and accordingly the Procurer shall not be obliged before enforcing this BANK GUARANTEE to take any action in any court or arbitral proceedings against the Successful Bidder/Seller, to make any claim against or any demand on the Successful Bidder/Seller or to give any notice to the Successful Bidder/Seller or to enforce any security held by the Procurer or to exercise, levy or enforce any distress, diligence or other process against the Successful Bidder/Seller.**

**The Guarantor Bank acknowledges that this BANK GUARANTEE is not personal to the Procurer and may be assigned, in whole or in part, (whether absolutely or by way of security) by the Procurer to any entity to whom it is entitled to assign its rights and obligations under the PPA.**

**The Guarantor Bank hereby agrees and acknowledges that the Procurer shall have a right to invoke this Bank Guarantee either in part or in full, as it may deem fit.**

**Notwithstanding anything contained hereinabove, our liability under this Guarantee is restricted to Rs. .... crores (Rs. .... crores only) and it shall remain in force until .....[Date to be inserted is three (3) months after the Scheduled Delivery Date], with an additional claim period of thirty (30) days thereafter. This BANK GUARANTEE shall be extended from time to time for such period, as may be desired by ..... [Insert name of the Successful Bidder/Seller]. We are liable to pay the guaranteed amount or any part thereof under this Bank Guarantee only if the Procurer(s) serves upon us a written claim or demand.**

**In witness whereof the Bank, through its authorized officer, has set its hand and stamp on this ..... day of ..... at .....**

**Signature  
Name:  
Designation with Bank Stamp  
Attorney as per power of attorney No. ....**

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**For:**

..... [Insert Name of the Bank]

**Full Address:**

Dated this ..... day of ..... 20.....

**Witness:**

1. ....

**Signature**

**Name and Address**

2. ....

**Signature**

**Name and Address**

**Note: The Stamp Paper should be in the name of the Executing Bank.**

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**20**    *SCHEDULE 10: SELECTED BID*

**[The Bid of the Successful Bidder to be inserted in this Schedule]**

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Scheduled Commercial Banks

SBI and Associates

- 63. State Bank of India
- 64. State Bank of Bikaner and Jaipur
- 65. State Bank of Hyderabad
- 66. State Bank of Indore
- 67. State Bank of Mysore
- 68. State Bank of Patiala
- 69. State Bank of Saurashtra
- 70. State Bank of Travancore

Nationalised Banks

- 20. Allahabad Bank
- 21. Andhra Bank
- 22. Bank of India
- 23. Bank of Maharashtra
- 24. Bank of Baroda
- 25. Canara Bank
- 26. Central Bank of India
- 27. Corporation Bank
- 28. Dena Bank
- 29. Indian Bank
- 30. Indian Overseas Bank
- 31. Oriental Bank of Commerce
- 32. Punjab National Bank
- 33. Punjab and Sind Bank

- 34. Syndicate Bank**
- 35. Union Bank of India**
- 36. United Bank of India**
- 37. UCO Bank**
- 38. Vijaya Bank**

## 2. Foreign Banks

- 48 BNP Paribas**
- 49 Citi Bank N.A.**
- 50 Deutsche Bank A.G.**
- 51 The Hongkong and Shanghai Banking Corporation Ltd.**
- 52 Standard Chartered Bank**
- 53 ABN Amro Bank N.V.**
- 54 UFJ Bank Ltd.**
- 55 Sumitomo Mitsui Banking Corporation**
- 56 Societe Generale**
- 57 Barclays Bank**
- 58 Bank of Novascotia**

## 3. Scheduled Private Banks

- 7 ING Vysya Bank Ltd.**
- 8 ICICI Bank Ltd.**
- 9 HDFC Bank Ltd.**
- 10 IDBI Bank Ltd**
- 11 Axis Bank**
- 12 Kotak Mahindra Bank**

*[Note: The Authorized Representative is authorized to modify the aforesaid list of Banks as deemed fit. Such modification shall not be construed as a change in standard bidding documents.]*

## 22 SCHEDULE 12: SUBSTITUTION RIGHTS OF THE LENDERS

*[This Schedule shall be inserted only if the Successful Bidder requests for substitution rights of the Lenders to be provided. Further this Schedule shall be removed in case the Seller is a Trading Licensee.]*

### 22.1 Substitution of the Seller

22.1.1 Subject to the terms of the PPA, upon occurrence of a Seller Event of Default under the PPA, the Lenders shall, have the right to seek substitution of the Seller by a Selectee for the residual period of the PPA, for the purposes of securing the payments of the Total Debt Amount from the Seller and performing the obligations of the Seller, in accordance with the provisions of this Schedule.

22.1.2 The Lenders may seek to exercise right of substitution by an amendment or novation of the PPA and other RFP Documents executed between Procurer(s) and the Seller in favour of the Selectee, the Procurer(s) and the Seller shall cooperate with the Lenders to carry out such substitution.

### 22.2 Procurers Notice of Default

22.2.1 The Procurer(s), who serve(s) the Preliminary Default Notice on the Seller as per this Agreement, shall simultaneously also issue a copy of the same to the Lenders.

### 22.3 Substitution Notice

22.3.1 In the event of failure of the Seller to rectify the Seller Event of Default giving rise to Preliminary Default Notice and on receipt of a copy of the Termination Notice by the Procurer(s), the Lenders, either on their own or through its representative (the “**Lenders’ Representative**”) shall be entitled to notify the Procurer(s) and the Seller of the intention of the Lenders to substitute the Seller by the Selectee for the residual period of the PPA (the “**Substitution Notice**”).

### 22.4 Interim operation of Power Station

22.4.1 On receipt of a Substitution Notice, no further action shall be taken by any Party to terminate the PPA, except under and in accordance with the terms of this Schedule 12 of this Agreement.

22.4.2 On issue of a Substitution Notice, the Lenders shall have the right to request the Procurer(s) to enter upon and takeover the Power Station for the interim

and till the substitution of the Selectee is complete and to otherwise take all such steps as are necessary for the continued operation and maintenance of the Power Station, including levy, collection and appropriation of payments thereunder, subject to, the servicing of monies owed in respect of the Total Debt Amount as per the Financing Agreements and the Seller shall completely cooperate in any such takeover of the Power Station by the Procurer(s). If the Procurer(s), at their sole and exclusive discretion agree to enter upon and takeover the Power Station, till substitution of the Selectee in accordance with this Agreement, such Procurer(s) shall be compensated for rendering such services in accordance with Clause 12.9.4 of this Schedule.

22.4.3 If the Procurer(s) refuse to takeover the Power Station on request by the Lenders in accordance with Clause 12.4.2 above, the Seller shall have the duty and obligation to continue to operate the Power Station in accordance with the PPA till such time as the Selectee is finally substituted.

22.4.4 The Lenders and the Procurer(s) shall, simultaneously have the right to commence the process of substitution of the Seller by the Selectee in accordance with these terms and the Seller hereby irrevocably consents to the same.

## **22.5 Process of Substitution of Seller**

22.5.1 The Lenders' Representative may, on delivery of a Substitution Notice notify the Procurer(s) and the Seller on behalf of all the Lenders about the Lenders' decision to invite and negotiate, at the cost of the Lenders, offers from third parties to act as Selectee, either through private negotiations or public auction and / or a tender process, for the residual period of the PPA. Subject to and upon approval of the [Insert "Procurer" or "Lead Procurer", referred to in Article 15.1 as applicable], such Selectee shall be entitled to receive all the rights of the Seller and shall undertake all the obligations of the Seller under the PPA and other RFP Documents executed between the Seller and the Procurer(s), in accordance with these terms of substitution.

22.5.2 The Lenders and the Seller shall ensure that, upon the [Insert "Procurer" in case of single Procurer or "Lead Procurer" in case of multiple Procurers] approving the Selectee, the Seller shall transfer absolutely and irrevocably, the ownership of the Power Station to such Selectee simultaneously with the amendment or novation of the PPA and other RFP Documents executed between the Seller and the Procurer(s) in favour of the Selectee as mentioned in Clause 12.1.2 of this Schedule.

## 22.6 Modality for Substitution

### Criteria for selection of the Selectee

22.6.1 The Lenders and / or the Lenders' Representative shall in addition to any other criteria that they may deem fit and necessary, apply the following criteria in the selection of the Selectee:

- (a) if the Seller is proposed to be substituted prior to the Scheduled Delivery Date or Revised Scheduled Delivery Date, as the case may be, the Selectee shall possess the financial capability used to qualify bidders in the RFP stage (including the methodology prescribed therein) to perform and discharge all the residual duties, obligations and liabilities of the Seller under the PPA. If the Seller is proposed to be substituted during the Operation Period, this criteria shall not be applicable.**
- (b) the Selectee shall have the capability and shall unconditionally consent to assume the liability for the payment and discharge of dues, if any, of the Seller to the Procurer(s) under and in accordance with the PPA and also payment of the Total Debt Amount to the Lenders upon terms and conditions as agreed to between the Selectee and the Lenders;**
- (c) the Selectee shall have not been in breach of any agreement between the Selectee and any Bank or any Lender or between the Selectee and [Insert "the Procurer" or "any of the Procurers", as applicable], involving sums greater than Rupees ..... (Rs .... ) [Insert amount] at any time in the last two (2) years as on the date of the substitution notice to the Seller.**
- (d) any other appropriate criteria, whereby continuity in the performance of the Selectee's obligations under the PPA is maintained and the security in favour of the Lenders under the Financing Agreements is preserved.**

## 22.7 Modalities

22.7.1 The following modalities shall be applicable to any substitution of the Seller by the Selectee pursuant to this Agreement:

22.7.2 The Lenders' Representative shall on behalf of the Lenders propose to the Procurer(s) (the "Proposal") pursuant to Clause 12.7.3 below, the name of the Selectee for acceptance, seeking:

- (a) grant of all the rights and obligations under the PPA and the other RFP Documents executed between the Procurer(s) and the Seller, to the Selectee (as substitute for the Seller);**
- (b) amendment of the PPA and the other RFP Documents executed between the Procurer(s) and the Seller, to the effect that the aforementioned grant to the Selectee, shall be such that the rights and obligations assumed by the Selectee are on the same terms and conditions for the residual period of the PPA as existed in respect of the Seller under the original PPA and the other RFP Documents executed between the Procurer(s) and the Seller; and**
- (c) the execution of new agreements as necessary, by the proposed Selectee for the residual period of the PPA on the same terms and conditions as are included in this Agreement.**

22.7.3 The Proposal shall contain the particulars and information in respect of the Selectee and the data and information as Procurer/ All Procurers (insert as applicable) may reasonably require. The Procurer(s) may intimate any additional requirement within thirty (30) days of the date of receipt of the Proposal.

22.7.4 The Proposal shall be accompanied by an unconditional undertaking by the Selectee that it shall, upon approval by the Procurer(s) of the Proposal:

- (a) observe, comply, perform and fulfill the terms, conditions and covenants of the PPA and all other RFP Documents executed between Seller and the Procurer(s) or a new PPA or respective RFP Document (in the case of the novation thereof), which according to the terms therein are required to be observed, complied with, performed and fulfilled by the Seller, as if such Selectee was the Seller originally named under the PPA; or the respective RFP Document; and**
- (b) be liable for and shall assume, discharge and pay the Total Debt Amount or then outstanding dues to the Lenders under and in accordance with the Financing Agreements or in any other manner agreed to by the Lenders and the Procurer(s) as if such Selectee was the Seller originally named under such Financing Agreements.**

22.7.5 At any time prior to taking a decision in respect of the Proposal received under Clause 12.7.2, the Procurer(s) may require the Lender/ Lenders' Representative to satisfy it as to the eligibility of the Selectee. The decision of the Procurer(s) as to acceptance or rejection of the Selectee, shall be made reasonably and when made shall be final, conclusive and binding on the Parties.

22.7.6 The Procurer/ All Procurers (insert as applicable) shall convey their approval or disapproval of such Proposal, through the Lead Procurer, if applicable, to the Selectee. Such decision shall be made by the Procurers at their reasonably exercised discretion within twenty one (21) days of:

**(c) the date of receipt of the Proposal by the Procurer(s); or**

**(d) the date when the last of further and other information and clarifications in respect of any data, particulars or information included in the Proposal requested by any of the Procurers under Clause 12.7.3 above is received;**

**whichever is later.**

**Notwithstanding anything to the contrary mentioned in this Agreement, the approval of the Procurer(s) or Lead Procurer for the Selectee shall not be withheld in case the Selectee meets the criteria mentioned in Clause 12.6.1.**

22.7.7 Upon approval of the Proposal and the Selectee by the Procurer(s), the Selectee mentioned in the Proposal shall become the Selectee hereunder.

22.7.8 Following the rejection of a Proposal, the Lenders and/ or the Lenders' Representative shall have the right to submit a fresh Proposal, proposing another Selectee (if the rejection was on the grounds of an inappropriate third party proposed as Selectee) within sixty (60) days of receipt of communication regarding rejection of the Selectee previously proposed. The provisions of this article shall apply *mutatis mutandis* to such fresh Proposal.

22.7.9 The substitution of the Seller by the Selectee shall be deemed to be complete upon the Selectee executing all necessary documents and writings with or in favour of the Seller, Procurer(s) and the Lenders so as to give full effect to the terms and conditions of the substitution, subject to which the Selectee has been accepted by the Lenders and the Procurer(s) and upon transfer of ownership and complete possession of the Power Station by the Procurer(s) or the Seller, as the case may be, to the Selectee. The Procurer(s) shall novate all the RFP Documents, which they had entered in to with the Seller in order to make the substitution of the Seller by the Selectee effective. The quantum and manner of payment of the consideration payable by the Selectee to the Seller

towards purchase of the Power Station and assumption of all the rights and obligations of the Seller under the PPA and other RFP Documents as mentioned in this Agreement shall be entirely between the Seller, Selectee and the Lenders and the Procurer(s) shall in no way be responsible to bear the same.

22.7.10 Upon the substitution becoming effective pursuant to Clause 12.7.9 above, all the rights of the Seller under the PPA shall cease to exist:

Provided that, nothing contained in this sub-article shall prejudice any pending / subsisting claims of the Seller against a Procurer or any claim of the Procurer(s) against the erstwhile Seller or the Selectee.

22.7.11 The Selectee shall, subject to the terms and conditions of the substitution, have a period of ninety (90) Days to rectify any breach and/ or default of the Seller subsisting on the date of substitution and required to be rectified and shall incur the liability or consequence on account of any previous breach and/ or default of the Seller.

22.7.12 The decision of the Lenders and the Procurer(s) in the selection of the Selectee shall be final and binding on the Seller and shall be deemed to have been made with the concurrence of the Seller. The Seller expressly waives all rights to object or to challenge such selection and appointment of the Selectee on any ground whatsoever.

22.7.13 The Lenders shall be solely and exclusively responsible for obtaining any and all consents/ approvals or cooperation, which may be required to be obtained from the Seller under this Agreement and the Procurer(s) shall not be liable for the same.

22.7.14 All actions of the Lenders' Representative hereunder shall be deemed to be on behalf of the Lenders and shall be binding upon them. The Lenders' Representative shall be authorised to receive payment of compensation and any other payments, including the consideration for transfer, if any, in accordance with the Proposal and the Financing Agreements and shall be bound to give valid discharge on behalf of all the Lenders.

## **22.8 Seller's Waiver**

22.8.1 The Seller irrevocably agrees and consents (to the extent to which applicable law may require such consent) to any actions of the Lenders, the Lender's Representative and the Procurer(s) or exercise of their rights under and in accordance with these terms.



- 22.8.2 The Seller irrevocably agrees and consents (to the extent to which applicable law may require such consents) that from the date specified in Clause 12.7.10, it shall cease to have any rights under the PPA or the Financing Agreements other than those expressly stated therein.
- 22.8.3 The Seller warrants and covenants that any agreement entered into by the Seller, in relation to the Power Station, shall include a legally enforceable clause providing for automatic novation of such agreement in favour of the Selectee, at the option of the Lenders or the Procurer(s). The Seller further warrants and covenants that, in respect of any agreements which have already been executed in relation to the Power Station and which lack a legally enforceable clause providing for automatic novation of such agreement, the Seller shall procure an amendment in the concluded agreement to incorporate such clause.

## **22.9 Interim Protection Of Service And Preservation Of Security**

### **Appointment of a Receiver**

- 22.9.1 In every case of the Lenders issuing a Substitution Notice and the Procurer(s) refusing to takeover the Power Station and the Seller failing to operate the Power Station in accordance with Clause 12.4.3 and the Procurer(s) not electing to act as Receiver as per Clause 12.9.2 hereof, the Lenders may institute protective legal proceedings for appointment of a receiver (the "Receiver") to maintain, preserve and protect the assets held as security by the Lenders if such right is granted under the terms of the Financing Agreements.
- 22.9.2 If the assets of the Power Station are, in the opinion of the Procurer(s), necessary and required for the operation and maintenance of the Power Station, the Procurer(s) shall be entitled to elect to act as the Receiver for the purposes of this Article and be entitled to maintain, preserve and protect the said assets by engaging an operator/service provider to act on their behalf and the Lenders and Seller hereby consent and agree to the same. Upon the Procurer(s) so intimating the Seller and the Lender's representative their desire to act as Receiver, the Seller and the Lender's representative shall co-operate with the Procurers to facilitate the same.
- 22.9.3 Upon appointment of the Court appointed Receiver or the Procurer(s) acting as Receiver, all the Receivables received by such Receiver shall be deposited by the Receiver in the bank account jointly designated by the Procurer(s) and the Lenders. The Receiver shall be responsible for protecting the assets in receivership and shall render a true and proper account of the receivership to the Lenders in accordance with the terms of its appointment.

22.9.4 When acting as a Receiver or operator in accordance with Clauses 12.9 or 12.4.2, Procurer(s) shall be entitled to be remunerated for such services as may be determined by the Appropriate Commission. Furthermore, when acting as a Receiver, the Procurer(s) shall not be liable to the Lenders, the Lenders' Representative, Seller or any third party for any default under the PPA, damage or loss to the Power Station or for any other reason whatsoever, except for wilful default of the Procurer(s).

## **22.10 Substitution Consideration**

22.10.1 The Lenders and Procurer(s) shall be entitled to appropriate any consideration received for the substitution of the Seller as hereinabove provided, from the Selectee towards the payment of Lenders' and the Procurers' respective dues, to the exclusion of the Seller.

22.10.2 The Seller shall be deemed to have nominated, constitutes and appoints the Lenders' Representative as its constituted attorney for doing all acts, deeds and things as may be required to be done for the substitution of the Seller by the Selectee pursuant to these terms.

## **22.11 Change in the Procurers or Lenders**

22.11.1 The Parties hereto acknowledge that during the subsistence of the PPA, it is possible that any Procurer(s) may cease to be a party to this Agreement by reason of termination of PPA vis-à-vis such Procurer and any Lender may cease to remain as a Lender by reason of repayment of the debt or otherwise. Further it may possible that any Lender may be substituted or a new Lender may be added. In the event of any Procurer or Lender ceasing to be a party to the PPA or Financing Agreement respectively, the term and conditions as prescribed in this Schedule shall cease to automatically apply to such Procurer or Lender as the case may be. Further, upon any entity being added as a Lender and in the event such entity is given the right to substitute the Seller under the Financing Agreement and then the contents of this Schedule shall be applicable to the exercise of such right by the said new entity.

**23** SCHEDULE 13: CAPITAL STRUCTURE SCHEDULE

(This shall need to be filled up in case Seller is not a Trading Licensee and on or before NTP)

DEFAULT ESCROW AGREEMENT

FOR

LONG TERM SEASONAL LOAD PROCUREMENT OF POWER

DEFAULT ESCROW AGREEMENT

Dated [day, month], 2009

Between

[Insert Name of the Procurer] ("Procurer")

and

**[insert name of SELECTED BIDDER]**

("Seller")

and

**[insert name of the Escrow Agent]**

("Escrow Agent")

And

[insert name of Bank]

[insert name of Bank]

[insert name of Bank]

[insert name of Bank n]

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("Procurer's Banks")

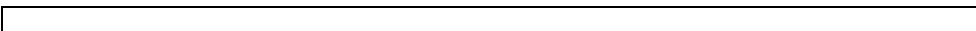
FOR

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**Procurement of power on Long Term under Case – 1 for meeting the seasonal load requirements of [Insert Name of the Procurer] in the state of Rajasthan in India.**

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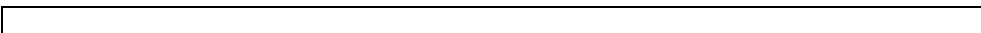
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This DEFAULT ESCROW AGREEMENT made this *[insert date]*, 2009 at \_\_\_\_\_ by and between:

1. **[Insert Name of the Procurer], a registered company incorporated under Companies Act 1956 having its office at \_\_\_\_\_ (hereinafter referred to as “Procurer” which expression shall unless repugnant to or inconsistent with the context, mean and include its successors and permitted assigns) of the FIRST PART; and**
2. **[Insert Name], a company incorporated under the Companies Act, 1956, with its registered office at *[insert address]*, (hereinafter referred to as the “Seller” which expression shall, unless repugnant to or inconsistent with the context, mean and include its successors and permitted assigns) of the SECOND PART; and**
4. ***[insert name of Default Escrow Agent]*, a *[insert nature of Default Escrow Agent]*, with its registered office at *[insert address]*, (hereinafter referred to as the “Escrow Agent” which expression shall, unless repugnant to or inconsistent with the context, mean and include its successors and permitted assigns) of the THIRD PART; and .**
4. **The Persons whose names and details are provided in Schedule 1 (hereinafter collectively referred to as the “Procurer’s Banks” or “Subsidiary Escrow Agents” which expression shall, unless repugnant to or inconsistent with the context, mean and include their respective successors and permitted assigns) of the FOURTH PART (Each of the parties of the FIRST, SECOND, THIRD and FOURTH PART above are individually referred to as a “Party” and collectively as the “Parties”).**

WHEREAS:

  - A. **In accordance with the Competitive Bidding Guidelines, the distribution companies of Rajasthan namely Jaipur Vidyut Vitran Nigam Limited (JVVNL), Ajmer Vidyut Vitran Nigam Limited (AVVNL) and Jodhpur Vidyut Vitran Nigam Limited (JdVVNL) through their Authorised Representative had invited interested companies and/or Bidding Consortium and or any Consortium Member thereof (“Bidders”) to purchase the Request for Proposal (RFP) to participate in the bidding process for the selection of Successful Bidder(s) for procurement of power for ‘long term’ through tariff based competitive bidding process under Case – 1 bidding procedure for meeting their ‘seasonal load’ power**

\_\_\_\_\_



**requirements as per the terms and conditions of the RFP Document.**

- C. Pursuant to the said bidding process, \_\_\_\_\_ [Insert name of Selected Bidder] has been identified as the Selected Bidder to supply power to the Procurer for a Contracted Capacity of \_\_\_\_\_ [to be filled in based on Selected Bid] MW in accordance with the terms of PPA.**
- E. The Procurer has agreed to purchase the Electrical Output upto Contracted Capacity from the Seller and to pay the Seller the Tariff (as defined in the PPA) set out in Schedule 4 of the PPA and for such purposes, the Procurer and the Seller have entered into the PPA on or about the date hereof;**
- F. In terms of the said PPA, the Procurer is required to duly secure the Seller by establishing an arrangement for securing the Secured obligations (as defined hereinafter) and the Seller and the Procurer have agreed on a default escrow mechanism for the payments of Secured Obligations under the PPA;**
- G. The Procurer has appointed [insert name of Default Escrow Agent] as the Default Escrow Agent and each of the Procurer's Banks as the Subsidiary Escrow Agents for the purposes of this Agreement; and**
- H. The Procurer has issued standing and irrevocable instructions to the Subsidiary Escrow Agents to ensure the transfer of funds as provided herein.**

**NOW THEREFORE, in consideration of the foregoing and the respective covenants and agreements set forth in this Default Escrow Agreement and other considerations, the sufficiency and adequacy of which is hereby acknowledged, and intending to be legally bound hereby, the Parties agree as follows:**

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A20: ARTICLE 1  
DEFINITIONS AND INTERPRETATION

## **1.2 Definitions**

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**1.2.1 Capitalised terms used but not defined in this Agreement, shall, in so far as the context admits, have the same meaning in this Agreement as has been ascribed to them in the PPA.**

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1.1.2 Additionally, the following terms shall have the meaning hereinafter respectively assigned to them:

**“Agreement” means this Default Escrow Agreement entered into between the Procurer, the Seller and the Default Escrow Agent and the modifications, amendments or alterations thereto from time to time;**

**“Business Day” shall mean any day, which is not a bank or public holiday in \_\_\_\_\_ Rajasthan;**

**“Charge Creation Date” shall have the meaning as ascribed thereto in Article 3.2.1 of this Agreement;**

**“Consumers” shall mean all the customers of the Procurer who are or who would be receiving electricity or energy or other related services from the Procurer and who are liable to make payments of any kind to the Procurer;**

**“Default Escrow Account” shall mean the default Escrow account opened with the Default Escrow Agent pursuant to Article 2.2.1 of this Agreement for the purposes of this Agreement;**

**“Distress Event” means an event where:**

- (a) a liquidator has been appointed by a court of competent jurisdiction in a proceeding for the winding up of the Default Escrow Agent; or**
- (b) a court of competent jurisdiction has made an order of winding up of the Default Escrow Agent other than for the purpose of amalgamation or reconstruction acceptable to the Seller, Procurer and the Lenders; or**
- (c) an Indian Government Instrumentality, statutory body or a court of competent jurisdiction has issued or adopted any law, rule regulation or order or initiated any proceeding or otherwise taken any action which reasonably may be expected to have a material adverse effect on the ability of the Default Escrow Agent to satisfy its obligations under this Agreement.**

**“Dispute” shall have the meaning attributed thereto in Article 9.9.2 of this Agreement;**

**“Default Escrow Agent” or “Escrow Agent” shall mean the Procurer’s Bank referred to in Article 2.1.1 of this Agreement and**

**who will represent all the Subsidiary Escrow Agents for the purposes of this Agreement and discharge obligations specified in this Agreement;**

**“Effective Date” shall have the same meaning as defined in PPA.**

**“Event of Default” shall have the meaning set out in Article 8.1 of this Agreement;**

**“Fortnight” shall mean each continuous period of not less than fifteen (15) days;**

**“Agreement to Hypothecate Cum Deed of Hypothecation” shall mean the Agreement to Hypothecate Cum Deed of Hypothecation dated [ ] entered into between the Procurer and the Seller, a copy of which has been provided to the Default Escrow Agent and each of the Subsidiary Escrow Agents on execution of this Agreement;**

**“Month” means a period beginning at 00:00 hours midnight on the first (1<sup>st</sup>) day of a calendar month and ending at 24:00 hours midnight on the last day of such calendar month;**

**“Power Purchase Agreement” or “PPA” shall mean the agreement titled ‘Power Purchase Agreement’ dated \_\_\_\_\_ entered into between the Procurer and the Seller, as it may be amended from time to time;**

**“Procurer Account” shall have the meaning attributed thereto in Article 2.2.3(b) of this Agreement;**

**“Procurer’s Financing Parties” shall mean the banks and/or financial institutions and/or power producers, which have provided or propose to provide financial assistance and/or facilities to the Procurer including in particular the Procurer’s Banks and/or supply or propose to supply electricity to the Procurer and who have, for the repayment and/or discharge of obligations of the Procurer due to them, by way of a legally binding agreement being provided, as on the Effective Date, *inter alia*, security by way of a charge on the Receivables of the Procurer, the list of such parties and the details of charge on the Receivables as on the Effective Date is annexed as Schedule 2;**

**“Procurer’s Banks” shall mean all the banks with whom the Procurer is maintaining and operating bank accounts and/or enjoy working capital facilities and who have been appointed by the Procurer as the Subsidiary Escrow Agents and instructed by the Procurer to receive Incremental Receivables deposited therein, and transfer the same, to the Default Escrow Account in accordance with the terms of this Agreement the list of such parties as existing on the Effective Date is provided herein as Schedule 1. Provided that, in case of addition or deletion or change in number of Procurer’s Banks and Procurer’s Bank Account as per Article 3.5 of this Agreement, the Procurer’s Banks shall also be deemed to be modified accordingly;**

**“Receivables” shall mean all of the present and future payments, obligations monies, claims, bills and any other property whatsoever which may from time to time be derived from or accrue or be offered or due to the Procurer in respect of the sale**

by the Procurer to the Consumers of electric capacity, energy and / or services or for any other reason whatsoever and all proceeds thereof;

“Security” shall have the meaning ascribed thereto in Article 2.3.1 of this Agreement;

“Incremental Receivables” shall mean the amount of the Receivables, in excess of the amounts which have already been charged or agreed to be charged in favour of the Procurer’s Financing Parties by way of a legally binding agreement, executed prior to the Effective Date, provided such charge of the Procurer’s Financing Parties shall be limited to the extent of their outstanding exposure (including commitments for exposure) as on the Effective Date;

“Procurer’s Bank Accounts” mean the bank accounts established and maintained in the Procurer’s Banks by the Procurer in which the Receivables are deposited;

“Secured Obligations” shall mean

- (a) the amounts due to the bank which had issued the Letter of Credit encashable by the Seller as per the terms of the PPA; and
- (b) obligation of the Procurer for making payments due under Article 11 and Article 14 of the PPA,

Provided that, the amounts due to the bank, which had issued the Letter of Credit, referred to in (a) above shall always have a priority over the amounts due and payable under (b);

“Seller Account” shall have the meaning attributed thereto in Article 2.2.3(a) of this Agreement;

“Subsidiary Escrow Accounts” shall mean the escrow accounts referred to in Article 2.2.2 hereof;

“Subsidiary Escrow Agents” shall mean the Procurer’s Banks..

## **1.2 Interpretation**

Unless the context otherwise requires, the provisions of Article 1.2 of the PPA shall be deemed to be incorporated herein and shall apply for the purpose of this Agreement.

A21: ARTICLE 2  
APPOINTMENT OF DEFAULT ESCROW AGENT  
AND ESTABLISHMENT OF ACCOUNTS

## **2.1 Default Escrow Agent**

### **2.1.1 Appointment as agent**

The Procurer has appointed [*insert name of Escrow Agent*] as the Default Escrow Agent for the purposes of this Agreement. The Seller hereby accepts the appointment of the [*insert name of Escrow Agent*], through its [*insert location*] branch, as the Escrow Agent and who shall act as agent of the Procurer and the

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Seller in connection with this Agreement and the Agreement to Hypothecate Cum Deed of Hypothecation for the purposes and in accordance with the terms and provisions set forth herein and therein. The Subsidiary Escrow Agents accept the appointment of the Default Escrow Agent and agree to take instructions from him for the purposes of meeting their respective obligations under this Agreement.

#### **2.1.1A Appointment as Subsidiary Escrow Agent**

The Procurer has appointed the Procurer's Banks as the Subsidiary Escrow Agents for the purposes of this Agreement. The Seller hereby accepts such appointment. Subsidiary Escrow Agents shall act as agents of the Procurer and the Seller in connection with this Agreement and the Agreement to Hypothecate Cum Deed of Hypothecation for the purposes and in accordance with the terms and provisions set forth herein and therein.

#### **2.1.2 Acceptance of appointment**

Each of the Escrow Agent and the Subsidiary Escrow Agents hereby accept their appointment and agree to act as a Default Escrow Agent and Subsidiary Escrow Agents respectively.

#### **2.1.3 Primary obligation of the Default Escrow Agent**

Except as otherwise provided in this Agreement, the Default Escrow Agent shall hold and safeguard, the Default Escrow Account and all of the monies on deposit therein during the term of this Agreement and shall treat such monies as deposited by the Procurer with the Default Escrow Agent, to be held in trust by the Default Escrow Agent for the Seller and the Procurer and shall, in performing its functions and duties under this Agreement act as an agent for the Seller and the Procurer.

#### **2.1.4 Primary obligation of the Subsidiary Escrow Agents**

Except as otherwise provided in this Agreement, each of the Subsidiary Escrow Agents shall hold and safeguard, the Subsidiary Escrow Accounts and all of the monies on deposit therein during the term of this Agreement and shall treat such monies as deposited by the Procurer with the Subsidiary Escrow Agents, to be held in trust by the Subsidiary Escrow Agents for performing their functions and duties under this Agreement.

### **2.2 Establishment of Accounts**

#### **2.2.1 Establishment of the Default Escrow Account**

The Procurer shall, within seven (7) days of the Effective Date establish in his name a special, segregated and irrevocable cash

collateral account at the specified branch of the Default Escrow Agent which account shall be maintained at all times until the termination of this Agreement (hereinafter referred to as the "Default Escrow Account").

### **2.2.2 Establishment of the Subsidiary Escrow Accounts**

All bank accounts of the Procurer with the Procurer's Banks shall be deemed to have been designated by the Procurer as subsidiary escrow accounts (hereinafter referred to as the "Subsidiary Escrow Account/s") for the purposes of this Agreement.

### **2.2.3 Seller and Procurer Accounts**

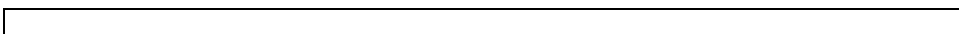
No later than seven (7) days after the Effective Date:

- (a) the Seller shall establish and maintain in its name an account at the branch of the Default Escrow Agent (hereinafter referred to as the "Seller Account"); and
- (b) the Procurer shall establish and maintain in its name an account at the branch of the Default Escrow Agent or designate any of its then existing current account with the Default Escrow Agent (hereinafter referred to as the "Procurer Account")

until the termination of this Agreement.

## **2.3 Subsidiary Escrow Agents and Default Escrow Agent's obligations**

2.3.8 The Procurer has, pursuant to the Agreement to Hypothecate Cum Deed of Hypothecation agreed to grant a first priority charge/security interest in favour of the Seller on the Incremental Receivables (the "Security"). Upon the occurrence of an Event of Default mentioned in Article 8.1 (b), (d), (e), (f) and (g) in accordance with the terms of this Agreement, the Subsidiary Escrow Agents shall ensure that all the Incremental Receivables available in their respective Subsidiary Escrow Accounts are transferred to the Default Escrow Account. On the occurrence of an Event of Default mentioned in Article 8.1 (b), (d), (e), (f) and (g), the Default Escrow Agent shall ensure that the Incremental Receivables transferred by the Subsidiary Escrow Agents to the Default Escrow Account are transferred to the LC Account (as defined hereinafter) or the Seller Account or to the Procurer Account, in accordance with the terms of this Agreement. Immediately upon the occurrence of an Event of Default mentioned in Article 8.1 (b), (d), (e), (f) and (g), all Subsidiary Escrow Agents shall prepare a statement listing out the amount of Incremental Receivables available with them and shall send such statement to Default Escrow Agent. For such calculation of Incremental Receivables, each Subsidiary Escrow Agent shall assume that only the amounts available in their respective accounts are available for meeting their outstanding claims which have become due (but are unpaid). Provided such outstanding claims shall only relate to the legally binding



commitments which had been made prior to the Effective Date. The Procurers shall also immediately send to the Default Escrow Agent, a list of the amounts due but unpaid to any other Procurer Financing Parties provided such amounts shall only relate to the legally binding commitments which had been made prior to the Effective Date. On the basis of the information received, the Default Escrow Agent shall determine the total amount of Incremental Receivables available and shall thereafter send instructions to the Subsidiary Escrow Agents to release an amount equal to the Incremental Receivables in accordance with the provisions of Article 5.3. The above process shall be repeated on a daily basis till the continuance of the Event of Default under Articles 8.1 (b), (d), (e), (f) and (g).

**2.3.9** The Default Escrow Agent and the Subsidiary Escrow Agents shall provide to the Procurer and the Seller, no later than the fifteen (15) Business Days from the end of each quarter, a statement of accounts detailing all deposits, transfers, disbursements or payments into and from the Default Escrow Account and the Subsidiary Escrow Accounts, respectively, during the previous quarter. During any period, following the delivery of a notice of the occurrence of an Event of Default and until delivery of notice that the Event of Default has been cured and is no longer continuing, the Default Escrow Agent and the Subsidiary Escrow Agent shall provide such statement of accounts to the Seller and the Procurer on a daily basis.

**2.3.10** The Default Escrow Agent and the Subsidiary Escrow Agents shall, at all times, act and discharge its/their functions and obligations under this Agreement in accordance with the principle of protecting and enforcing the rights and interest of the Seller hereunder and the Security afforded to it herein for the full and timely performance by the Procurer of the Secured Obligations, in the manner contemplated herein.

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**2.3.11** The Subsidiary Escrow Agents shall ensure,

- (i) till the occurrence of any Event of Default mentioned in Article 8.1 (b), (d), (e), (f) and (g), the efficient and immediate transfer of Receivables and/or Incremental Receivables from the Subsidiary Escrow Account in any manner as required by the Procurer and in accordance with the provisions of this Agreement; and
- (ii) upon the occurrence of any Event of Default mentioned in Article 8.1 (b), (d), (e), (f) and (g) , the transfer of Incremental Receivables from the Subsidiary Escrow Account strictly in accordance with Article 5 of this Agreement.

**2.3.12** The Default Escrow Agent's duties and responsibilities shall be limited to those expressly set forth herein. Without affecting the rights and obligations of the Procurer or the Seller, the Default Escrow Agent shall not be subject to nor obligated to recognise,

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except as contemplated herein, any other agreement or arrangement between the Procurer and the Seller or the Procurer and Subsidiary Escrow Agents, nor shall any such agreement or arrangement be deemed to be incorporated herein by reference thereto.

**2.3.13** As soon as practicable but in no event later than fifteen (15) days from the Effective Date, the Procurer and the Seller shall deliver to each other and to the Default Escrow Agent and Subsidiary Escrow Agent, specimen signatures of their respective authorised officers duly attested by their banks for the purposes of this Agreement. The Procurer and the Seller shall have the right to change their respective authorised officers by delivering specimen signatures of their respective new authorised officers.

**2.3.14** Notwithstanding anything contained in Section 171 and Section 221 of the Indian Contract Act, 1872, the Default Escrow Agent and Subsidiary Escrow Agents shall not have any lien or be entitled to assert a general claim on or against the monies in the Default Escrow Account or the Subsidiary Escrow Accounts respectively.

Procurer's Banks hereby confirm and agree to limit their charge on the Receivables to the extent of their outstanding exposure (including commitments for exposure) as on the Effective Date and cede their existing first priority charge, if any, on the Incremental Receivables, such ceding to be effective as of the Charge Creation Date.

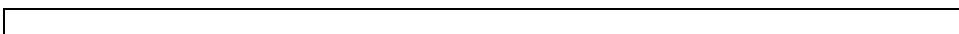
## **2.4 Continuation**

Any corporation or association into which the Default Escrow Agent or the Subsidiary Escrow Agent(s) may be converted or merged, or with which it may be consolidated or to which it may sell or transfer its business and assets as a whole or substantially as a whole or any corporation or association resulting from any such conversion, sale, merger, consolidation or transfer to which it is a party, shall be and become the successor Default Escrow Agent or the successor Subsidiary Escrow Agent/s hereunder, without the execution or filing of any agreement, document or instrument or any further act, deed or conveyance on the part of the Parties, anything herein to the contrary notwithstanding:

Provided, however, the Seller shall be entitled, if it deems proper, not to accept any such successor Default Escrow Agent and take further steps for requiring replacement thereof in accordance with Article 9.8 of this Agreement.

## **2.5 Income Attribution**

All interest and other amounts in the Default Escrow Account or the Subsidiary Escrow Accounts shall be the income of the Procurer as per the provisions of the relevant tax laws of India.





A22: ARTICLE 3  
OBLIGATIONS OF THE PROCURER

### **3.1 Reaffirmation of Procurer obligations**

The Procurer covenants with the Seller that it will pay or discharge each of the Secured Obligations in accordance with the provisions of the PPA and this Agreement.

### **3.2 Creation of Charge**

**3.2.6** The Procurer hereby agrees that at least forty five (45) days prior to the original or Revised Scheduled Delivery Date (“Charge Creation Date”), as the case may be, it shall create first charge over the Incremental Receivables in favour of the Seller and confirm effective as of the Charge Creation Date and until satisfaction of the Secured Obligations and the termination of this Agreement. The Procurer’s Financing Parties shall not have any charge over the Incremental Receivables or any part of the Security, and that such charge, if created in future, in favour of the Procurer’s Financing Parties or any other entity would be secondary and subordinate to the first charge created in favour of the Sellers pursuant to the Agreement to Hypothecate Cum Deed of Hypothecation entered into with the Seller. The Subsidiary Escrow Agents also agree to the provisions of this Article 3.2.1.

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**3.2.7** The Procurer shall also provide such other documents, certificates and agreements as the Seller may reasonably request in respect of creating a first priority charge over the Incremental Receivables, in favour of the Seller in accordance with Article 3.2.1 above.

### **3.3 Creation of further security interest**

The Procurer may create any other security interest subordinate and secondary to (i) the charge created in favour of the Seller over Incremental Receivables or (ii) any part thereof, in favour of any person other than the Seller for any reason whatsoever strictly in accordance with the provisions of this Agreement or the Agreement to Hypothecate Cum Deed of Hypothecation.

### **3.4 Changes in coverage**

3.4.1 No change shall be made or permitted by the Procurer in its business operations or collections policies which would result in the flow of Incremental Receivables as provided herein being reduced from what they would have been, had such change not been made or permitted as the case may be.

### **3.5 Changes in number of Procurer's Banks and Procurer's Bank Accounts**

i. If any changes occur in the Procurer's Bank Accounts, this Agreement shall be deemed to include all of such additional Incremental Receivables as received from such modified Procurer's Bank Accounts and such change in the Procurer's Bank Accounts shall be included in Schedule 1 accordingly.

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**Similarly, if there is any addition to the number of Procurer's Banks as provided in Schedule 1 hereof, such additional Procurer's Banks shall also be deemed to be appointed as the Subsidiary Escrow Agents of the Procurer for the purpose of this Agreement and the Procurers bank accounts with such banks shall be deemed as Subsidiary Escrow Accounts for the purposes of this Agreement.**

A23: ARTICLE 4  
DEPOSITS

#### 4.1 Procurer covenants

- iii. The Procurer agrees and confirms that it has irrevocably instructed, or shall irrevocably instruct any additional Procurer's Banks (appointed under Article 3.5) immediately on its appointment as Procurer's Bank, and shall cause and direct each of the Subsidiary Escrow Agents to transfer on the occurrence of an Event of Default mentioned in Article 8.1 (b), (d), (e), (f) and (g) Incremental Receivables received by them directly into the Default Escrow Account.
- iv. The Procurer agrees and confirms that it shall not take any actions inconsistent with instructions given under clause 4.1.1 or interfere in any way with the transfer of Incremental Receivables by the Subsidiary Escrow Agents directly into the Default Escrow Account as per the terms of this Agreement or deliver or cause to be delivered to the Subsidiary Escrow Agents any amendment, modification or supplement to such instructions or any additional or new instructions regarding payment of Incremental Receivables by them without the express written approval of the Seller, which amendment, modification or supplement thereto or any such additional or new instructions shall be effective only if consented to by a duly authorised representative of the Seller.

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#### 4.3 Routing of amounts into the accounts

4.3.1 Any and all credits made into Subsidiary Escrow Accounts, the Default Escrow Account and the Procurer's Bank Accounts under this Agreement shall be irrevocable and all income or gain earned or realised on amounts on such credit in the Subsidiary Escrow Accounts, Default Escrow Account shall be treated for all purposes of this Agreement as part of the Default Escrow Account or Subsidiary Escrow Accounts, as the case may be.

- 4.3.3 The Procurer irrevocably directs the Default Escrow Agent, and the Default Escrow Agent agrees to deposit immediately upon receipt of all Incremental Receivables from the Subsidiary Escrow Agents directly into the Default Escrow Account, notwithstanding any instructions or directions to the contrary by any Subsidiary Escrow Agents, on and from the date of the occurrence of an Event of Default mentioned in Article 8.1 (b), (d), (e), (f) and (g), to be dealt with in the manner as specified in Article 5.

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A24: ARTICLE 5  
OPERATION AND MANAGEMENT

OF THE DEFAULT ESCROW ACCOUNT

## **5.1 General**

All amounts deposited in the Default Escrow Account shall be applied by the Default Escrow Agent as provided for in this Article 5. All such amounts to the extent of the Incremental Receivables shall, among others, constitute a part of the Security and shall not constitute payment of any Secured Obligations until applied to the payment thereof as hereinafter provided.

## **5.2 Disbursements**

So long as any Event of Default mentioned in Article 8.1 (b), (d), (e), (f) and (g) has not occurred, the Subsidiary Escrow Agents shall ensure the efficient and immediate transfer of Receivables and/or Incremental Receivables from the Subsidiary Escrow Account in to the Procurer Account or in any manner as required by the Procurer.

In case of occurrence of any Event of Default mentioned in Article 8.1 (b), (d), (e), (f) and (g) and in case it is continuing, the Incremental Receivables shall be transferred from the Subsidiary Escrow Account and the Default Escrow Account in the manner specified in Article 5.3.

## **5.3 Procedures after occurrence of an event under Article 11.4.1.4 of the PPA**

5.3.2 (i) Upon the drawal by the Seller of the Letter of Credit as per Article 8.4.5 of the PPA and the failure on part of the Procurer to reinstate the Letter of Credit within a period of seven (7) days thereafter and provided the Seller has provided a written notice (with a copy to the Procurer) of the occurrence of such event to the Subsidiary Escrow Agents and Default Escrow Agent, all disbursements, transfers and withdrawals of Incremental Receivables from the Subsidiary Escrow Accounts pursuant to Article 5.2 above shall cease and all transfers and withdrawals of Incremental Receivables from the Subsidiary Escrow Accounts and the Default Escrow Account shall be governed and carried out by the Default Escrow Agent strictly and only in accordance with Article 5.3.2.

Provided that, if, after the Seller has exercised its right to make the drawal of the Letter of Credit in accordance with Article 8.4.5 of the PPA, the Procurer is able to reinstate the Letter of Credit within a period of seven (7) days thereafter, the Subsidiary Escrow Agent shall not be liable to transfer Incremental Receivables to the Default Escrow Account and

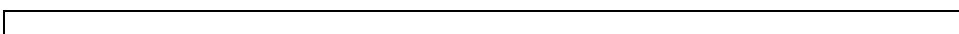
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the Default Escrow Agent shall not be liable to transfer any funds from the Default Escrow Account into the LC Account or the Sellers Account, as relevant.

- (ii) In the event, the Seller is unable to draw on the Letter of Credit pursuant to the failure of the Procurer to establish the Letter of Credit as required under the provisions of Article 8.4.2 and Article 8.4.3 of the PPA, the Seller shall instruct the Subsidiary Escrow Agents and the Default Escrow Agent by giving a notice in writing with a copy to the Procurer to transfer the Incremental Receivables from the Subsidiary Escrow Accounts and thereon from the Default Escrow Account to the Seller Account to the extent of maximum of the amounts due to the Seller under Article 8.4.5 of the PPA, along with copies of the documents as required to be submitted by the Seller as per Article 8.4.5 of the PPA and the Subsidiary Escrow Agents and the Default Escrow Agent shall so transfer the funds, subject to the provisions of Article 5.3.5 hereof.

5.3.2 The Subsidiary Escrow Agents shall immediately after a period of seven (7) days from the drawal of the Letter of Credit by the Seller and subject to Clause 5.3.1(i) above, transfer the total Incremental Receivables from the Subsidiary Escrow Account to the Default Escrow Account. The Default Escrow Agent shall immediately, transfer such Incremental Receivables from the Default Escrow Account to an account specified by the bank which has issued the Letter of Credit ("LC Banker") for the purpose of reinstating the Letter of credit ("LC Account") and shall continue to transfer such Incremental Receivables in to such account for such period until the amount so transferred is adequate to reinstate the Letter of Credit as per the terms of the PPA.

5.3.3 During currency of the transfer of Incremental Receivables to the Default Escrow Account and from the Default Escrow Account to the LC Account or the Seller's Account, the Subsidiary Escrow Agent and the Default Escrow Agent shall not transfer money being part of such Incremental Receivables from the Subsidiary Escrow Account



and the Default Escrow Account to the Procurer Account, or its nominee except upon receiving written instructions from the Seller in this regard.

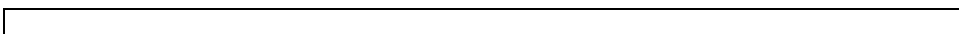
**5.3.4 Ommitted**

**5.3.5 The above provisions of Article 5.3.3 shall be subject to the provisions of this Article. Immediately upon transfer of adequate funds to cover the amounts due to the Seller under Article 8.4.5 of the PPA as per Article 5.3.1 (ii) or to meet the requirements of reinstatement of Letter of Credit as per Article 5.3.2, as the case may be, the transfer of amounts from the Subsidiary Escrow Account and the surplus monies in the Default Escrow Account to the Procurer Account shall recommence in accordance with Article 5.2 above.**

**5.3.6 In the event of any Dispute between the Procurer and the Seller arising out of this Agreement, the Procurer shall have recourse to the dispute resolution in accordance with the provisions mentioned in Article 9.9.2 of this Agreement:**

Provided that, pending the full and final resolution of such Dispute, the Subsidiary Escrow Agent and the Default Escrow Agent shall retain Incremental Receivables in the Subsidiary Escrow Account and the Default Escrow Account respectively and shall not allow transfer of Incremental Receivables to the extent of the amount under dispute, from the Subsidiary Escrow Account and the Default Escrow Account to the LC Account or the Procurer Account or the Seller Account.

**Upon the full and final conclusion of a dispute, either Party may bring the decision of the adjudicator to the notice of the Subsidiary Escrow Agents and the Default Escrow Agent who shall be bound by such decision and shall carry out such actions as are specified in the decision.**



*A25: ARTICLE 6*  
*REPRESENTATION AND WARRANTIES*

## **6.1 Representations and Warranties of the Procurer**

The Procurer hereby represents and warrants to the Seller and the Default Escrow Agent as of the date of this Agreement and at all times that:

- (a) the Procurer is a duly constituted entity and is validly existing under the laws of India and has all requisite legal power and authority to execute this Agreement and to carry out the terms, conditions and provisions contained in this Agreement;
- (b) this Agreement constitutes valid legal and binding obligations of the Procurer, enforceable in accordance with the terms of this Agreement;
- (c) to the best of the knowledge of the Procurer, there is no pending or threatened action, suit or proceeding before any court, tribunal or judicial or quasi judicial body or Government that could reasonably be expected to materially and adversely affect the financial condition or operations of the Procurer or the ability of the Procurer to perform its obligations under this Agreement or which purports to affect the legality, validity or enforceability of this Agreement;
- (d) the execution, delivery and performance of this Agreement by the Procurer have been duly authorised by all requisite actions and will not constitute a violation of:
  - (i) any statute, judgement, order, decree or regulation of any court, Indian Government Instrumentality or arbitral tribunal applicable or relating to the Procurer, its assets or its business; or
  - (ii) the Procurer's constitution or other documents or any indenture, contract or agreement to which it is Party or by which it or its property may be bound;
- (e) no hypothecation, lien, charge, security interest or other encumbrance shall exist over or shall be created over the Incremental Receivables, after the Charge Creation Date or otherwise than as permitted under this Agreement or the Agreement to Hypothecate Cum Deed of Hypothecation;
- (f) after the Charge Creation Date, the Procurer's Financing Parties do not and shall not have any first ranking security charge, security interest or other encumbrance over the Incremental Receivables, except a second<sup>1</sup> and subordinate charge which may be created in their favour in accordance with Articles 3.2.1 and 3.3 above;

- (g) the schedules, annexes and other attachments attached hereto do not and will not contain any material misstatement of fact which is untrue or omit to state any fact, the omission of which makes or will make any of the statements therein, in the light of the circumstances under which they were or will be made, misleading in any respect;
- (h) all filings and other actions necessary to create, perfect and protect a first priority security interest and charge with respect to the Security have been duly made or taken or shall be duly made and taken before Commercial Operations Date of the first Unit of the Power Station and as of the said date, all such filings and actions shall be in full force and effect; and
- (i) the information relating to the Procurer's Financing Parties and Procurer's Banks given in the Schedules 1 and 2 of this Agreement, shall be complete and accurate in all material respects and all such accounts are held and made in good faith.

## **6.2 Representations and Warranties of the Default Escrow Agent**

The Default Escrow Agent shall represent and warrant to the Seller and the Procurer as of the Effective Date and at all times that:

- (a) the Default Escrow Agent is a scheduled commercial bank and duly constituted under the [*insert statute*] having its head office at [*insert address*] and its branch among others, at [*insert address*] and validly existing under the laws of India and has all requisite legal power and authority to enter into this Agreement and to perform its duties and obligations hereunder;
- (b) this Agreement constitutes the valid legal and binding obligations of the Default Escrow Agent enforceable in accordance with the terms of this Agreement;
- (c) there are no actions, suits or proceedings pending or threatened, against or affecting the Default Escrow Agent before any court or administrative body or arbitral tribunal that could reasonably be expected to affect adversely and materially the ability of the Default Escrow Agent to perform its duties and obligations under this Agreement;
- (d) the execution delivery and performance of this Agreement has been duly authorised by all requisite action, and will not constitute a violation of:
  - (i) any statute, judgement, order, decree or regulation of any court, Indian Government Instrumentality or arbitral tribunal applicable or relating to the Default Escrow Agent, its assets or its business; or

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- (ii) the Default Escrow Agent's constitution or other documents or any indenture, contract or agreement to which it is a party or by which it or its property may be bound; and
- (e) the Default Escrow Agent is not aware of any other charge or security interest or encumbrance granted over the Incremental Receivables in favour of any other person other than the Seller.

### **6.3 Representations and Warranties of the Seller**

The Seller hereby represents and warrants to the Default Escrow Agent and the Procurer that:

- (a) it has been duly constituted under the Indian Companies Act, 1956 as amended and is validly existing under the laws of India and has all requisite legal power and authority to enter into this Agreement and to perform its duties and obligations hereunder;
- (b) this Agreement constitutes the valid, legal and binding obligations of the Seller enforceable in accordance with the terms of this Agreement; and
- (c) the execution, delivery and performance of this Agreement by the Seller has been duly authorised by all requisite action, and will not constitute a violation of:
  - (i) any statute, judgement, order, decree or regulation of any court, Indian Government Instrumentality or arbitration tribunal applicable or relating to the Seller, its assets or its business; or
  - (ii) the Seller's constitution or other documents or any indenture, contract or agreement to which it is Party or by which it is Party or by which it or its property may be bound.

### **6.4 Representations and Warranties of the Subsidiary Escrow Agents**

Each of the Subsidiary Escrow Agents represents and warrants to the Seller and the Procurer as of the Effective Date and at all times that:

- (a) the Subsidiary Escrow Agent is a commercial bank and duly constituted under the [*insert statute*] having its head office at [*insert address*] and its branch among others, at [*insert address*] and validly existing under the laws of India and has all requisite legal power and authority to enter into this Agreement and to perform its duties and obligations hereunder;
- (b) this Agreement constitutes the valid legal and binding obligations of the Subsidiary Escrow Agent enforceable in accordance with the terms of this Agreement;

- (c) there are no actions, suits or proceedings pending or threatened, against or affecting the Subsidiary Escrow Agent before any court or administrative body or arbitral tribunal that could reasonably be expected to affect adversely and materially the ability of the Subsidiary Escrow Agent to perform its duties and obligations under this Agreement;**
- (d) the execution delivery and performance of this Agreement has been duly authorised by all requisite action, and will not constitute a violation of:**

  - (i) any statute, judgement, order, decree or regulation of any court, Indian Government Instrumentality or arbitral tribunal applicable or relating to the Subsidiary Escrow Agent, its assets or its business;**
  - or**
  - (ii) the Subsidiary Escrow Agent's constitution or other documents or any indenture, contract or agreement to which it is a party or by which it or its property may be bound; and**
- (e) the Subsidiary Escrow Agent is not aware of any other charge or security interest or encumbrance granted over the Incremental Receivables in favour of any other person other than the Seller.**

A26: ARTICLE 7  
COVENANTS

## 7.1 Procurer Covenants

The Procurer covenants that:

**(d)** It shall create and maintain valid, perfected and enforceable first priority and ranking security interest and charge over all of the Security pursuant to the Agreement to Hypothecate Cum Deed of Hypothecation;

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**(e)** It shall procure all amendments, approvals, consents or waivers as may be required from the Procurer Financing Parties and any other financing parties from whom such amendments, approvals, consents or waivers are required, for the creation, maintenance and enforcement of the security interest contemplated hereby or by the Agreement to Hypothecate Cum Deed of Hypothecation in favour of the Seller;

It shall not after the Charge Creation Date grant or create a first priority security interest, hypothecation, charge, lien, security interest or other encumbrance over the Incremental Receivables, throughout the term of this Agreement other than the Security created hereunder and created under the Agreement to Hypothecate Cum Deed of Hypothecation in favour of the Seller except in compliance with the provisions of this Agreement or the Agreement to Hypothecate Cum Deed of Hypothecation;

**(f)** It shall obtain in a timely manner and maintain in full force and effect (or where appropriate, renew) all authorisations that are necessary and that are required to be in the name of the Procurer, in connection with:

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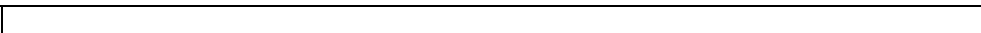
**(iii)** the execution, delivery, performance and observance by the Procurer of this Agreement; and

**(iv)** the validity, binding effect and enforceability of this Agreement;

**(e)** it shall effect all registrations, recordings, filings, and notarisations, which are or may become necessary to enable the performance by the Procurer of its obligations under this Agreement and the Agreement to Hypothecate Cum Deed of Hypothecation;

**(f)** it shall execute such further documents, instruments and register or record the same and take any other action necessary to give effect to this Agreement; and

- (g) it shall inform the Seller of any receipt of notice, claim, legal proceedings instituted against it which might affect the payment obligations as set out in the Agreement.**



*A27: ARTICLE 8*  
*EVENTS OF DEFAULT*

## **8.1 Events of Default**

For the purposes of this Agreement, the term “Event of Default” shall mean the occurrence or existence of any one or more of the following:

- (g)** the Procurer being in breach of its material obligations under this Agreement or the Agreement to Hypothecate Cum Deed of Hypothecation;
- (h)** the Procurer committing a Procurer Event of Default as mentioned in Article 11.1.1 (i) of the PPA;
- (i)** any representation or warranty made by the Procurer in this Agreement shall be or shall have been incorrect in any material respect;
- (j)** Upon the drawal by the Seller of the Letter of Credit as per Article 8 of the PPA and the failure on part of the Procurer to reinstate the Letter of Credit within a period of seven (7) days thereafter and provided the Seller has provided a written notice (with a copy to the Procurer) of the occurrence of such event to the Subsidiary Escrow Agents and Default Escrow Agent
- (k)** the Seller is unable to draw on the Letter of Credit pursuant to the failure of the Procurer to establish the Letter of Credit as required under the provisions of Article 8 of the PPA and provided the Seller has provided a written notice (with a copy to the Procurer) of the occurrence of such event to the Subsidiary Escrow Agents and Default Escrow Agent;
- (l)** Default by the Procurer for the repayment and/or discharge of obligations of the Procurer to any person under a legally binding agreement providing inter alia, security by way of a charge on the Incremental Receivables of the Procurer, provided such charge to such person enjoys a lower priority and ranking security interest to the Seller.

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A28: ARTICLE 9  
MISCELLANEOUS

## 9.1 Expenses

Except in cases specified in Articles 9.8.2 and 9.8.6 of this Agreement, the Seller and Procurer shall bear, in equal proportion, all the expenses of the Default Escrow Agent and each Subsidiary Escrow Agent regarding opening and maintaining the Default Escrow Account and the Sectional Escrow Account respectively and the expenses (including reasonable expenses for legal services of every kind) relating to the execution and enforcement of this Agreement or the Agreement to Hypothecate Cum Deed of Hypothecation including, without limitation, any stamp tax or duty, required to be paid under this Agreement and with respect to any variation, waiver or modification or any consent required in connection with this Agreement or the Hypothecation Agreement Cum Deed of Hypothecation. The Default Escrow Agent shall not be entitled to deduct any amount due and payable by the Seller to the Default Escrow Agent from monies deposited in the Default Escrow Account and the Procurer Account established pursuant to this Agreement. The Default Escrow Agent shall however be entitled to deduct any amount due and payable by the Procurer to the Default Escrow Agent from monies deposited in the Procurer Account established pursuant to this Agreement.

## 9.2 Variation, Waivers and Modifications

No variation, waiver or modification of the terms of this Agreement shall be valid unless reduced in an agreement in writing signed by the Parties hereto.

## 9.3 Notices

9.3.1 Any notice, direction, instruction, certificate and any other communication required or permitted to be given hereunder shall be in writing and shall be:

- (d) personally delivered; or
- (e) transmitted by postage prepaid registered mail; or
- (f) delivered through courier.

as elected by the Party giving such notice, direction, instruction, certificate or other communication to the addressee as set-forth below.

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9.3.2 Except as otherwise specified herein, the date of any notice, direction, instruction, certificate or other communication hereunder shall be deemed to be:

(c) the date of receipt if delivered personally or through courier;

(d) the date seven (7) days after posting if sent by mail;

9.3.5 Except as otherwise expressly provided herein, all notices, directions, instructions, certificates or other communications hereunder and all documents or instruments delivered in connection with this transaction shall be in the English language.

9.3.6 Notices shall be sent:

In case of the Seller

[insert details]

In case of the Procurer

[insert details]

In case of the Default Escrow Agent

[insert details]

In case of the Procurer Banks

[insert details]

## 9.4 No Third Party Beneficiaries

This Agreement is solely for the benefit of the Procurer, the Default Escrow Agent and the Seller and their respective permitted assigns and successors (including the Lenders in the case of the Seller) and no other person shall have any rights under this Agreement.

## 9.5 No Waiver

The failure of a Party to insist in one or more instances upon the strict performance of any of the provisions of this Agreement or to take advantage of any of its rights under this Agreement shall not be construed as a waiver of any such provisions or relinquishment of any rights hereunder but the same shall continue in full force and effect.

## 9.6 Severability

The invalidity or unenforceability, for any reason, of any provision of this Agreement shall not prejudice or affect the validity or enforceability of the other provisions of this Agreement. Provided however, if the said provision is fundamental provision of this Agreement or forms part of the consideration or object of this Agreement, the provision of this Article shall not apply.

## 9.7 Assignments

This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and permitted assigns. No Party shall assign any of its rights or obligations under this Agreement, to any third party, other than Lenders to the Project, without the prior written consent of the other Parties to this Agreement. provided, however, that such consent shall not be required for any

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assignment, (and transfer) by the Seller of any or all of its rights hereunder to or in favour of the Selectee appointed in accordance with the terms of the PPA.

## **9.8 Term and Termination**

### **9.8.1 Term and Termination or Expiry of the PPA**

This Agreement shall be effective from the Effective Date. Subject to the provisions of Article 9.8.2 of this Agreement, the Agreement shall be co-terminus with the PPA and shall terminate on the Expiry Date or if the PPA is terminated earlier in accordance with the terms therein, if at such time, all of the Secured Obligations towards the Seller, under the PPA, have been paid in full. The Procurer shall notify the Default Escrow Agent of such Expiry Date occurring or termination together with the Seller's confirmation that all of the Secured Obligations towards the Seller, under the PPA, have been paid in full and then the Procurer shall instruct the Default Escrow Agent to transfer all funds in the Default Escrow Account to the Procurer Account, and Default Escrow Agent shall cease to act as the Default Escrow Agent and cease to implement any other fund transfer provided for in this Agreement.

### **9.8.2 End of the Default Escrow Account**

Notwithstanding anything contained to the contrary in this Agreement, this Agreement may be terminated by the Procurers, if all of the following events (a), (b) and (c) have occurred:

- (a) A period of not less than two (2) years, from the Scheduled Delivery Date or Revised Scheduled Delivery Date, has elapsed; and
- (b) The Procurer has achieved, for its ability to honour its Tariff Payment obligations to the Seller under PPA, a credit rating of 'A' or better from a SEBI registered Indian credit rating agency (acceptable to Lenders) consistently for a period of at least three (3) years; and
- (c) Immediately prior to the aforementioned three (3) year period, for a period of at least two (2) years, there has been no Procurer Event of Default under Article 11 of the PPA by such Procurer.

Provided that, the Procurer shall intimate the Seller in writing of the occurrence of the above events and its intention to terminate this Agreement. If the Seller desires to continue with this Agreement, the Seller shall intimate the same to the Procurer in writing within thirty (30) days of receipt of intimation from the Procurer and in such case the Seller shall be liable to bear all the costs and expenses of continuation of this Agreement, including costs of the Escrow Agent and each Subsidiary Escrow Agent, with effect from such date. In case



the Seller fails to respond or agrees to terminate this Agreement, this Agreement shall stand terminated.

### **9.8.3 Resignation**

**The Default Escrow Agent may, after giving at least one hundred eighty (180) days notice in writing to both Parties resign from acting as Default Escrow Agent for the purposes of this Agreement.**

**Provided however that, no such resignation of the Default Escrow Agent shall be effective until the Parties jointly find a successor bank and such successor bank assumes its responsibilities after execution of an Default Escrow agreement (substantially in the form and content of this Agreement).within the period prescribed by this Agreement.**

**Provided further that, if a successor bank acceptable to the Seller is found within a shorter period, the Parties (with the consent of the Lenders) may waive the notice period of one hundred eighty (180) days.**

### **9.8.4 Termination of Appointment**

**If, in the reasonable judgement of the Seller the Default Escrow Agent commits any material breach of the terms of this Agreement, the Seller shall have the right to require the Procurer to terminate the appointment of the Default Escrow Agent after giving to the Procurer and the Default Escrow Agent a written notice of ninety (90) days or of such shorter period (not shorter than thirty (30) days) as the Seller may decide. Such termination of the appointment of the Default Escrow Agent shall not be effective until a successor bank assumes responsibility.**

### **9.8.5 Termination For a Distress Event**

**Upon the occurrence of a Distress Event, the Seller or Procurer shall serve a written notice of termination on the Default Escrow Agent with copies to either party and appointment of the Default Escrow Agent shall immediately terminate on receipt of such notice by the Default Escrow Agent.**

### **9.8.6 Procedure**

- (a) In the event of notice of resignation by the Default Escrow Agent or a notice of termination of the Default Escrow Agent by the Seller in accordance with Article 9.8.4 or 9.8.5 above, the Procurer and the Seller shall forthwith take steps to appoint a successor bank as Default Escrow Agent and shall, not later than thirty (30) days before the effectiveness of such resignation or termination, execute and cause such successor bank to execute an agreement with the Procurer and the Seller, on terms substantially similar to those**

contained in this Agreement. All expenses arising due to termination or appointment of the successor Default Escrow Agent by the Seller shall be borne by the Seller.

(b) The Default Escrow Agent shall:

- (i) cease therewith accepting any payments or deposits to the Default Escrow Account;
- (ii) transfer all amounts standing to the credit for the Default Escrow Account to the Default Escrow Account opened with the replacement Default Escrow Agent;
- (iii) when all such amounts have been transferred, close the Default Escrow Account; and
- (iv) within thirty (30) days of such closing, provide to the Procurer and the Seller a written report which shall fully reconcile all deposits to, and withdrawals from the Default Default Escrow Account.

- (c) In the event of the resignation or termination of the Default Escrow Agent and the appointment of a successor to the Default Escrow Agent pursuant to this Article 9.8, new default Escrow Account shall be opened at the main branch of the successor Default Escrow Agent and the relevant provisions of this Agreement shall be applicable to each such account.

## **9.9 Governing Law and Jurisdiction and Dispute Resolution**

**9.9.2** This Agreement shall be governed by and constructed in accordance with the laws of India.

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9.9.2 If any dispute arises between the Parties hereto during the subsistence of this Agreement, in connection with the validity, interpretation, implementation or alleged breach of any provision of this Agreement or regarding any question as to whether the termination of this Agreement by one Party hereto has been legitimate ('Dispute'), such Dispute shall be resolved by arbitration under the Indian Arbitration and Conciliation Act, 1996, in accordance with the process specified in this Article. In the event of such Dispute remaining unresolved, any party to such Dispute may initiate arbitration in accordance with this Article:.

- (i) If the Dispute exists amongst all the Parties, any of the disputing party shall be entitled to serve an arbitration notice on other parties and propose name of the sole arbitrator. If both the other parties do not accept the person proposed by the party giving the notice, the arbitration tribunal shall consist of five arbitrators, each of the Escrow

Agent, Seller and Procurer appointing one arbitrator and the three arbitrators so appointed appointing two more arbitrators;

Provided that if the Dispute is between any two parties to this Agreement, then the Arbitration tribunal shall consist of three arbitrators, each disputing party appointing one arbitrator and the two arbitrators so appointed shall appoint the third arbitrator. All the appointments or acceptances envisaged under this sub-clause shall be made within 30 days of being first called upon by any disputing party to so appoint or accept;

- (ii) The place of arbitration shall be -----, Rajasthan, India.  
The language of the arbitration shall be English;
- (iii) The arbitration tribunal's award shall be substantiated in writing. The arbitration tribunal shall also decide on the costs of the arbitration proceedings and the allocation thereof;
- (iv) The award shall be enforceable in any court having jurisdiction, subject to the applicable Laws; and
- (v) The provisions of this Article shall survive the termination of the PPA for any reason whatsoever.

## **9.10 Entire Agreement**

The Agreement, including the Schedules, contains all of the understandings and agreements of whatsoever kind and nature existing between all the Parties hereto with respect to the subject matter of this Agreement and the rights, interests, understandings, agreements and obligations of the Parties relating thereto.

## **9.11 Confidentiality**

The Parties undertake to hold in confidence and not to disclose the terms and conditions of this Agreement and the transaction contemplated hereby to third parties, except:

(c) to their professional advisors;

(d) to their officers, employees, agents or representatives, who need to have access to such information for the proper performance of their activities;

without the prior written consent of the other Parties.

Provided that, the Procurer shall always have the right to make public this Agreement in accordance with the Bidding Guidelines.

## **9.12 Counterparts**

This Agreement may be executed by the Parties hereto on separate counterparts, each of which when so executed and delivered shall be an original, but all of which shall together constitute one and the same instrument.

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**IN WITNESS WHEREOF, the Parties have executed and delivered this Agreement effective as of the date first above written.**

SIGNED AND DELIVERED

**BY THE WITHINNAMED " PROCURER"  
BY THE HAND OF Mr. \_\_\_\_\_  
(AUTHORISED SIGNATORY) PURSUANT TO THE  
RESOLUTION PASSED BY THE BOARD  
ON THE        DAY OF                    2009**

**IN THE PRESENCE OF:  
WITNESS:**

**NAME AND ADDRESS:**

SIGNED AND DELIVERED

**BY THE WITHINNAMED " SELLER"  
BY THE HAND OF Mr. \_\_\_\_\_  
(AUTHORISED SIGNATORY) PURSUANT TO THE  
RESOLUTION PASSED BY THE BOARD  
ON THE        DAY OF                    2009**

**IN THE PRESENCE OF:  
WITNESS:**

**NAME AND ADDRESS:**

SIGNED AND DELIVERED

**BY THE WITHINNAMED "DEFAULT ESCROW  
AGENT"  
BY THE HAND OF Mr. \_\_\_\_\_  
(AUTHORISED SIGNATORY)**

**ON THE        DAY OF                    2009**

**IN THE PRESENCE OF:  
WITNESS:**

**NAME AND ADDRESS:**

--

SIGNED AND DELIVERED  
BY THE WITHIN NAMED "PROCURER BANKS"

- 1.
- 2.
- 3.
- 4.

BY THE HAND OF THEIR RESPECTIVE  
AUTHORISED SIGNATORIES

ON THE        DAY OF                    2009

IN THE PRESENCE OF:  
WITNESS:

NAME AND ADDRESS:

--

A29: SCHEDULE 1  
PROCURER'S BANKS

A30: (TO BE INSERTED)

SCHEDULE 2  
PROCURER'S FINANCING PARTIES

**(To be inserted)**

DRAFT AGREEMENT TO HYPOTHECATE CUM DEED OF  
HYPOTHECATION

FOR

LONG TERM SEASONAL LOAD PROCUREMENT OF POWER



Dated [*insert date, month*], 2009

**Draft**

AGREEMENT TO HYPOTHECATE Cum DEED OF HYPOTHECATION

between

[Insert Name of the Procurer] (“Procurer”)

and

[*insert name of SELECTED BIDDER*]  
 (“Seller”)

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**Procurement of power on Long Term under Case – 1 for meeting the seasonal load requirements of [Insert Name of the Procurer] in the state of Rajasthan in India.**

A31:

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**This AGREEMENT TO HYPOTHECATE Cum DEED OF HYPOTHECATION AGREEMENT is made this [insert date], 2008 at \_\_\_\_\_, by and between:**

- 1. [Insert Name of the Procurer], a registered company incorporated under Companies Act 1956 having its office at \_\_\_\_\_ (hereinafter referred to as "Procurer" which expression shall unless repugnant to or inconsistent with the context, mean and include its successors and permitted assigns) of the FIRST PART; and**

2. **[Insert Name], a company incorporated under the Companies Act, 1956, with its registered office at [insert address], (hereinafter referred to as the “Seller” which expression shall, unless repugnant to or inconsistent with the context, mean and include its successors and permitted assigns) of the SECOND PART; (Each of the parties of the FIRST and SECOND PART above are individually referred to as a “Party” and collectively as the “Parties”).**

WHEREAS:

- A. **In accordance with the Competitive Bidding Guidelines, the distribution companies of Rajasthan namely Jaipur Vidyut Vitran Nigam Limited (JVVNL), Ajmer Vidyut Vitran Nigam Limited (AVVNL) and Jodhpur Vidyut Vitran Nigam Limited (JdVVNL) through their Authorised Representative had invited interested companies and/or Bidding Consortium and or any Consortium Member thereof (“Bidders”) to purchase the Request for Proposal (RFP) to participate in the bidding process for the selection of Successful Bidder(s) for procurement of power for ‘long term’ through tariff based competitive bidding process under Case – 1 bidding procedure for meeting their ‘seasonal load’ power requirements as per the terms and conditions of the RFP Document.**
- B. **Pursuant to the said bidding process, [Insert name of Selected Bidder] has been identified as the Selected Bidder to supply power to the Procurer for a Contracted Capacity of \_\_\_\_\_ [to be filled in based on Selected Bid] MW in accordance with the terms of PPA.**
- C. **The Procurer has agreed to purchase the Electrical Output upto Contracted Capacity from the Seller and to pay the Seller the Tariff (as defined in the PPA) set out in Schedule 4 of the PPA and for such purposes, the Procurer and the Seller have entered into the PPA on or about the date hereof;**
- D. **In terms of the said PPA, the Procurer is required to duly secure the Seller by establishing an arrangement for securing the Secured obligations (as defined hereinafter) and the Seller and the Procurer have agreed on a default escrow mechanism for the payments of Secured Obligations under the PPA.**
- E. **In furtherance of its obligations under the PPA the Procurer has agreed to create and grant a charge and security interest in favour of the Seller on the Procurer’s right, title and interest on and in the Incremental Receivables in accordance with the terms hereof; and**
- F. **Accordingly, the Parties wish to enter into this Agreement to formally record their respective understanding, representations and covenants in respect of the aforesaid.**

**NOW THEREFORE, in consideration of the foregoing and the respective covenants and agreements set forth in this Agreement and other considerations, the receipt, sufficiency and adequacy of which is hereby acknowledged, and intending to be legally bound hereby, the Parties agree as follows:**

A32: ARTICLE 1  
DEFINITIONS AND INTERPRETATION

**a. Definitions**

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**i.** Capitalised terms used but not defined in this Agreement, shall, in so far as the context admits, have the same meaning in this Agreement as has been ascribed to them in the PPA and the Default Escrow Agreement.

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**ii.** Additionally, the following terms shall have the meaning hereinafter respectively assigned to them:

“Agreement” means this Agreement to Hypothecate Cum Deed of Hypothecation Agreement entered into between the Procurer and the Seller and the modifications, amendments or alterations thereto from time to time;

“Business Day” shall mean any day which is not a bank or public holiday in \_\_\_\_\_ Rajasthan.

“Default Escrow Agreement” means the agreement titled ‘Default Escrow Agreement’ dated \_\_\_ entered into between the Parties and the Escrow Agent;

“Hypothecated Interest” shall have the meaning as ascribed thereto in Article 2.2.1 of this Agreement;

“Power Purchase Agreement” or “PPA” means the agreement titled ‘Power Purchase Agreement’ dated \_\_\_\_\_ entered into between the Procurer and the Seller and as may be amended from time to time;

**1.2 Interpretation**

Unless the context otherwise requires, the provisions of Article 1.2 of the PPA is incorporated herein by reference and shall apply for the purposes of this Agreement.

*A33: ARTICLE 2*  
*THE SECURITY INTEREST*

## **2.1 Covenant to pay**

In consideration of the Seller having entered into the PPA and agreeing to supply electricity to the Procurer, subject to the terms and conditions set out in the PPA, the Procurer does hereby covenant with the Seller that it shall pay to the Seller all the Secured Obligations in the manner set out in the PPA.

## **2.2 The Charge**

2.2.1 As security for the payment of the Secured Obligations when due in accordance with the PPA, the Procurer as the legal and / or beneficial owner of the Hypothecated Interest does hereby agree to hypothecate on the Charge Creation Date by way of first priority charge in favour of the Seller:

All right, title, interest, benefit, claims and demands whatsoever of the Procurer in respect of the Incremental Receivables (collectively, the "Hypothecated Interest").

The charge created pursuant to this Article by the Procurer over the Hypothecated Interest in favour of the Seller shall be a floating charge and subject to Article 3.1.1 of this Agreement, shall not hinder the Procurer from selling, leasing or otherwise disposing of or dealing with the Hypothecated Interest or any part thereof. Provided that, the floating charge created pursuant to this Article shall immediately and automatically be converted into a fixed charge upon the occurrence of any Event of Default as defined in the Default Escrow Agreement.

2.2.1A On the date of the creation of the first priority charge in accordance with Article 2.2.1, this Agreement to Hypothecate Cum Deed of Hypothecation shall be deemed to continue as the Deed of Hypothecation between the Parties in accordance with the terms contained herein.

2.2.1B At any time after an Event of Default as defined in the Default Escrow Agreement occurs and is continuing, the Seller shall have the authority to act upon and enforce the provisions of this Agreement in accordance with the provisions hereof and the PPA.

2.2.1C Following the occurrence of an Event of Default as defined in the Default Escrow Agreement, except as may be required under the PPA, the Seller shall not be obliged before taking steps to enforce the Security constituted by or pursuant to this Agreement to:

- (a) take action or obtain judgement or any arbitration award against the Procurer in any court or before any arbitrator;
- (b) make or file any claim or proof in a winding up or dissolution of the Procurer; and

- (c) **exercise any legal remedies, which may be available to it under or in respect of the PPA.**

## **2.3 Release of Charge**

2.3.1 The first priority charge created under Article 2.2.1 shall be immediately released and vacated on the earlier of:

- (a) **the date on which the PPA has terminated, in accordance with the terms thereof, and all the Secured Obligations have been paid in full;**
- (b) **the occurrence of all of the following events mentioned in sub-articles (i), (ii) and (iii) below, subject to the proviso to this sub-clause:**
  - (i) **A period of not less than two (2) years, from the Scheduled Delivery Date or Revised Scheduled Delivery Date, has elapsed; and**
  - (ii) **The Procurer has achieved, for its ability to honour its Tariff Payment obligations to the Seller under PPA, a credit rating of 'A' or better from a SEBI registered Indian credit rating agency (acceptable to Lenders) consistently for a period of at least three (3) years; and**
  - (iii) **Immediately prior to the aforementioned three (3) year period, for a period of at least two (2) years, there has been no Procurer Event of Default under Article 14 of the PPA by such Procurer.**

Provided that, the Procurer shall intimate the Seller in writing of the occurrence of the above events and its intention to release the first priority charge created under this Agreement. If the Seller desires to continue with said first priority pari passu charge, the Seller shall intimate the same to the Procurer in writing within thirty (30) days of receipt of intimation from the Procurer and in such case the Seller shall be liable to bear the costs of continuation of such first priority charge, with effect from such date. In case the Seller fails to respond or agrees to release the first priority charge, the said charge shall forthwith cease and this Agreement shall stand terminated.

2.3.2 In the case of the occurrence of the events described in Article 2.3.1(a) or (b) and in the event the Seller fails to respond or agrees to release the first priority charge as mentioned above, the Seller shall at its own costs and expenses forthwith:

- (a) **cede the benefit of the first priority charge on and security interest in the Hypothecated Interest; and**
- (b) **re-assign, retransfer or re-convey to the Procurer, or as it may direct, the Hypothecated Interest or such part thereof as may remain, freed from the Security created hereunder; and**

- (c) execute all such documents and do all such other acts as may be required by the Procurer in connection with the release of the benefit of the charge on and security interest in the Hypothecated Interest.**



*A34: ARTICLE 3*  
*FURTHER ENCUMBRANCES*

**3.1 Further Encumbrances**

- 3.1.1 Except for the charge created under this Agreement and permitted under Clause 3.1.2 hereof, the Procurer shall not, without the prior written consent of the Seller, which may be granted or rejected in its sole and absolute discretion within thirty (30) days of receipt of a request in this regard from the Procurer, create or suffer any mortgage, charge, lien or encumbrance in or to the Hypothecated Interest or any part thereof or do or allow anything that may prejudice this charge on the Hypothecated Interest
- 3.1.2 The Procurer shall be entitled to create a subordinate/second charge in favour of the Procurer Financing Parties over the Hypothecated Interest, provided however the Procurer shall ensure that the rights of the Seller under this Agreement are not prejudiced in any manner.

*A35: ARTICLE 4*  
*REPRESENTATIONS AND WARRANTIES*

## **4.1 Representations and Warranties of the Procurer**

The Procurer acknowledges that the Seller has entered into this Agreement in reliance on the representations and warranties made by the Procurer in this Agreement. The Procurer hereby represents and warrants to the Seller that:

- (a) The Procurer is a duly constituted entity validly existing under the laws of India and has all requisite legal power and authority to enter into this Agreement and to perform its duties and obligations hereunder;
- (b) This Agreement has been duly executed by a duly authorized officer of the Procurer and constitute the valid, legal and binding obligations of the Procurer enforceable in accordance with the terms hereof and thereof respectively;
- (c) The charge and security interest created hereunder constitute a first priority security interest in favour of the Seller;
- (d) To the best of its knowledge, there are no actions, suits or proceedings pending against the Procurer before any court or administrative body or arbitral tribunal that would adversely and materially affect the financial condition or operations of the Procurer or the ability of the Procurer to perform its duties and obligations under this Agreement;
- (e) The execution, delivery and performance of this Agreement by the Procurer have been duly authorized by all requisite actions, and will not constitute a violation of:
  - (i) any statute, judgement, order, decree or regulation of any court, Indian Government Instrumentality or arbitral tribunal applicable or relating to the Procurer, its assets or its business; or
  - (ii) the Procurer's constitution or other documents or any indenture, contract or agreement to which it is a party or by which it or its property may be bound;
- (f) Based on available records, the Receivables are believed by the Procurer to be true and bonafide and fully collectible Receivables generated in the ordinary course of business of the Procurer and the Procurer has full right and interest in the Receivables;
- (g) No charge, security interest or other encumbrance presently exists over the Hypothecated Interest other than the charge created under this Agreement.

## 4.2 Representations and Warranties of the Seller

The Seller hereby represents and warrants to the Procurer that:

- (a) The Seller is a company duly constituted under the Companies Act, 1956, as amended, and validly existing under the laws of India and has all requisite legal power and authority to enter into this Agreement and to perform its duties and obligations hereunder;
- (b) This Agreement has been duly executed by a duly authorized officer of the Seller and constitute the valid, legal and binding obligations of the Seller enforceable in accordance with the terms hereof ; and
- (c) The execution, delivery and performance of this Agreement by the Seller has been duly authorized by all requisite actions, and will not constitute a violation of:
  - (C) any statute, judgement, order, decree or regulation of any court, Indian Government Instrumentality or arbitral tribunal applicable or relating to the Seller, its assets or its business; or
  - (D) the Seller's constitution or other documents or any indenture, contract or agreement to which it is a party or by which it or its property may be bound.

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A36: ARTICLE 5  
PROCURER UNDERTAKINGS

## 5.1 Certain Undertakings

During the term of this Agreement, the Procurer shall:

- (a) do all acts and things as may be reasonably required or appropriate to give effect to the charge/ security interest created in favour of the Seller on and in the Hypothecated Interest and to take all steps to maintain such charges and security interest in full force and effect on and in the Hypothecated Interest;
- (b) obtain and maintain at its own expense any license, permission, consent or authorization and pay any taxes or duties, including without limitation, stamp duties, which may be required in order to create, maintain and preserve the charge/ security interest granted under this Agreement and to enable the Seller to have the full benefit of this Agreement;
- 2 deposit or cause to be deposited immediately upon the receipt of Receivables in the Procurer's Banks; and
- (d) after the occurrence and during the continuance of an Event of Default deliver to the Seller (not later than the second Business Day of each Month) copies of summary statements of the electricity sold during the immediately preceding Month.

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## 5.2 Indemnification

The Seller and every attorney, appointed by it shall be entitled to be indemnified out of the Hypothecated Interest in respect of all liabilities and expenses incurred by it in the execution of the powers of the Seller under this Agreement other than those arising on account of the negligence or default or misconduct on the part of the Seller, or any such attorney and against all actions, proceedings, costs, claims and demands in respect of any matter or thing done or omitted to be done by such person pursuant to this Agreement.

## 5.3 Further Actions

The Procurer shall from time to time upon the request of the Seller, promptly and duly execute or procure the execution of all such further documents and conduct such filings and registration, and take any other action (at the sole expense of the Seller) as the Seller may reasonably require in order that the Seller may obtain the full benefit of the charge created by this Agreement and of the rights and powers hereby granted.

A37: ARTICLE 6  
MISCELLANEOUS PROVISIONS

## **6.1 Continuing Security**

**3.2.8** The Security created by this Agreement shall be a continuing security for the performance and discharge of the Secured Obligations.

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**3.2.9** The Security so created

- (a) shall not be set aside by any intermediate payment or satisfaction of any part of the amount hereby secured; and
- (b) shall be in addition to and shall not in any way be prejudiced or affected by any collateral or other security now or hereafter held by the Seller for all or any part of the Secured Obligations.

**3.2.10** Neither the charge hereby granted nor the rights, powers and remedies conferred on the Seller by this Agreement or by law shall be discharged, impaired or otherwise affected by:

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- (a) any time or other indulgence given or agreed to be given by the Seller to the Procurer or any other party providing Security for the Secured Obligations;
- (b) any amendment of the PPA or the Default Escrow Agreement not agreed to by the Seller;
- (c) any release or exchange of Security or obligations granted or undertaken pursuant to PPA or the Default Escrow Agreement or any document connected therewith;
- (d) any other act, event or omission which but for this provision would impair or discharge the Procurer's liability hereunder; and
- (e) any change in the structure or organization of the Procurer as a result of a Change in Law, insolvency of the Procurer or otherwise.

## **6.2 Waiver and Severability**

No failure or delay by the Seller in exercising any right, power or remedy under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of the same preclude any further exercise thereof or the exercise of any other right, power or remedy. If at any time, any provision of this Agreement is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction, the legality, validity and enforceability of such provision under the law of any other jurisdiction, and of the remaining provisions of this Agreement, shall not be affected or impaired thereby. Provided however, if the said provision is fundamental provision of this Agreement or forms part of the consideration or object of this Agreement, the provision of this Article shall not apply

## **6.3 Assignment and Transfer**

**6.3.1** This Agreement shall inure to the benefit of the Seller and its successors and permitted assigns and the obligations of the Procurer hereunder shall be binding on its successors and assigns notwithstanding any Change in Law or change in the constitution or status of the Procurer or of any of its successors, to the extent stated therein.

**1.2.2** The Procurer shall not have the right to assign all or any of its rights or obligations hereunder.

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**1.2.3** The Seller shall have the right to assign all or any of its rights, title and interest hereunder and to the Hypothecated Interest as security only to the Lenders or the Selectee appointed under the terms of the PPA.

## 6.4 Notices

6.4.1 Any notice or other information required or authorised by this Agreement to be given shall be given in writing, in English and by:

**D.** delivering it by hand (a written acknowledgement in receipt thereof shall be sufficient evidence that the notice or other information has been duly given); or

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**E.** sending it by courier or registered post,;

to the relevant Parties at the addresses referred to in Article 6.4.2 below.

**5.3.2** The address and other details of the Parties for the purpose of communication, unless otherwise notified in writing to the other Parties shall be:

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*[Insert Address of the Procurer]*

*[insert addresses of the the Seller]*

## 6.5 Governing Law and Dispute Resolution

### 6.5.1 Governing Law

This Agreement shall be governed by and constructed in accordance with the laws of India.

### 6.5.2 Dispute Resolution

**If any dispute arises between the Parties hereto during the subsistence of this Agreement, in connection with the validity, interpretation, implementation or alleged breach of any provision of this Agreement or regarding any question as to whether the termination of this Agreement by one Party hereto has been legitimate, such Dispute shall be resolved by arbitration under the Indian Arbitration and Conciliation Act, 1996 and the Rules of the Indian Council of Arbitration, in accordance with the process specified in this Article. In the event of such Dispute remaining unresolved as referred to in this Article 6.5.2, any party to such Dispute may refer the matter to registrar under the Rules of the Indian Council of Arbitration.**

- (i) The Arbitration tribunal shall consist of three arbitrators to be appointed in accordance with the Indian Council of Arbitration Rules;**
- (ii) The place of arbitration shall be \_\_\_\_\_, Rajasthan, India. The language of the arbitration shall be English;**
- (iii) The arbitration tribunal's award shall be substantiated in writing. The arbitration tribunal shall also decide on the costs of the arbitration proceedings and the allocation thereof;**
- (iv) The award shall be enforceable in any court having jurisdiction, subject to the applicable Laws; and**
- (v) The provisions of this Clause shall survive the termination of the PPA for any reason whatsoever.**

## **6.6 Language**

This Agreement is written in the English language. The English language text of this Agreement shall prevail over any translation.

## **6.7 Amendments**

Any modification, amendment, or waiver of any provision of this Agreement shall be effective if in writing and signed in person or by an authorised representative of the Parties.

## **6.8 Counterparts**

This Agreement may be executed in two or more counterparts, but all of such counterparts shall together constitute one and the same instrument.

## **6.9 Terms of this Agreement to prevail**

The Parties hereto agree that if any provisions of this Agreement shall conflict with any provision of the PPA, then the provisions of this Agreement shall prevail.

## **6.10 Confidentiality**

The Parties undertake to hold in confidence and not to disclose the terms and conditions of this Agreement and the transaction contemplated hereby to third parties, except:

8 \_\_\_\_\_ to their professional advisors;

9 \_\_\_\_\_ to their officers, employees, agents or representatives, who need to have access to such information for the proper performance of their activities;

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**without the prior written consent of the other Parties.**

**Provided that, the Procurer shall always have the right to make public this Agreement in accordance with the Bidding Guidelines.**

## **6.11 Effectiveness**

**This Agreement shall become effective on the date of signing of this Agreement by the Parties.**

**IN WITNESS WHEREOF the Parties hereto have executed this Agreement through their authorised representatives on the day, month and year first above mentioned**

SIGNED AND DELIVERED

**BY THE WITHINNAMED " PROCURER"**

**BY THE HAND OF Mr. \_\_\_\_\_**

**(AUTHORISED SIGNATORY) PURSUANT TO THE**

**RESOLUTION PASSED BY THE BOARD**

**ON THE            DAY OF            2009**

**IN THE PRESENCE OF:**

**WITNESS:**

**NAME AND ADDRESS:**

SIGNED AND DELIVERED

**BY THE WITHINNAMED " SELLER"**

**BY THE HAND OF Mr. \_\_\_\_\_**

**(AUTHORISED SIGNATORY) PURSUANT TO THE**

**RESOLUTION PASSED BY THE BOARD**

**ON THE            DAY OF            2009**

**IN THE PRESENCE OF:**

**WITNESS:**

**NAME AND ADDRESS:**